

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION

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1	UNITED STATES OF AMERICA,	:	Case No. 1:20-cr-00142-1
2		:	
3	Plaintiff,	:	Jury Trial, Day 2
4		:	Wednesday, June 22, 2022
5	- v -	:	
6		:	9:00 a.m.
7	ALEXANDER SITTENFELD, a/k/a	:	
8	"P.G. Sittenfeld,"	:	
9	Defendant.	:	Cincinnati, Ohio

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TRANSCRIPT OF PROCEEDINGS

BEFORE THE HONORABLE DOUGLAS R. COLE, DISTRICT JUDGE

- - -

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1 P R O C E E D I N G S

2 (In open court at 9:05 a.m.)

3 - - -

4 THE COURT: Good morning. We're here this morning in
5 the matter of the United States of America versus Alexander
6 Sittenfeld. It's case number 1:20-cr-142. We're here for the
7 second day of trial.

8 It's the Court's understanding we're going to start the
9 day with openings from each side, and then move into
10 presentation of witnesses. Am I correct in that, Mr. Singer?

11 MR. SINGER: Yes, Your Honor.

12 THE COURT: Mr. Rittgers?

13 MR. C. MATTHEW RITTGERS: Yes, Your Honor.

14 THE COURT: Does the government have some idea of how
15 many witnesses it intends to put on today, Mr. Singer?

16 MR. SINGER: Depending how long openings go, most
17 likely two, but we may get into the third witness today.

18 THE COURT: And what have the parties been doing?
19 Have you given Mr. Rittgers notice of who the witnesses are
20 today?

21 MR. SINGER: Yes, Your Honor, we talked about it
22 yesterday evening.

23 MR. C. MATTHEW RITTGERS: Yes, Your Honor.

24 THE COURT: Very good. Well, before we bring in the
25 jury, first let me ask the parties are there any topics that,

1 from your perspective, we need to address this morning?

2 MR. SINGER: One housekeeping issue, Your Honor. We
3 raised yesterday a very small transcript discrepancy that we
4 have.

5 THE COURT: Right.

6 MR. SINGER: We've got a clip here. It's 10 seconds
7 long of the transcript that has the word at issue highlighted.

8 THE COURT: Okay.

9 MR. SINGER: We can present it to you if you would
10 like to listen to it before the jury is seated.

11 THE COURT: I would like to do that. Let's first get
12 the agenda here for morning. So I've got transcript as one of
13 the issues. Any other issues, Mr. Rittgers?

14 MR. C. MATTHEW RITTGERS: No, Your Honor. Given the
15 length of both openings, I would just suggest maybe taking a
16 short break after the government's opening so we can set up
17 our media equipment.

18 THE COURT: Sure. That seems appropriate.

19 MR. C. MATTHEW RITTGERS: Thank you, Your Honor.

20 THE COURT: So a couple other housekeeping matters
21 that I had just to put on the agenda, then we'll take care of
22 the word in the transcript.

23 First, at some point, we were talking about preliminary
24 instructions about defendant's election not to testify. Given
25 what I understand the status to be, do we want to have a

1 preliminary instruction about the defendant's election not to
2 testify? I'm happy to give it as a pattern instruction, but
3 it sounds like it won't apply, so...

4 MR. C. MATTHEW RITTGERS: We would prefer that you
5 give it, Your Honor, just out of a pattern instruction, even
6 though he's going to testify.

7 THE COURT: Okay. Thank you. Another topic I wanted
8 to address was I wasn't sure I understood the stipulation with
9 regard to the transcripts.

10 Are the transcripts going to be admitted as evidence in
11 the case?

12 MR. SINGER: Government will be moving to admit the
13 transcripts as evidence.

14 MR. C. MATTHEW RITTGERS: And, Your Honor, this goes
15 back to the briefing on the rule of completeness, and so we
16 didn't want to force the government to have to bring in
17 someone to authenticate the transcripts, like the
18 stenographer, which is why the government and the defense
19 tried to work together to craft something related to the
20 accuracy of the transcripts that might be played without
21 stipulating to the admissibility.

22 So we will continue and maintain our objection with
23 regard to the admissibility of transcripts.

24 THE COURT: So the stipulation that the parties filed
25 was not intended to be a stipulation as to the admissibility

1 of the transcript as evidence?

2 MR. C. MATTHEW RITTGERS: Correct, because of the
3 partial nature of those transcripts.

4 THE COURT: Jacob, can you email me the stipulation?

5 COURTROOM DEPUTY: It should be in there, Judge.

6 THE COURT: Thank you. So I'm going to read from the
7 stipulation, and this is where it got confusing for me.

8 So it says, "Before trial, the parties will jointly
9 request a preliminary instruction. If you notice any
10 differences between what you heard on the recordings and what
11 you read in the transcripts, you must rely on what you heard,
12 not what you read," which is a modified part of the Sixth
13 Circuit pattern instruction. I'm fine with that.

14 And then it says, "If during trial, the parties believe
15 there's discrepancy between any recording admitted into
16 evidence --" so that's saying the recording will be admitted
17 into evidence -- "and the transcripts, the parties and the
18 Court will determine whether discrepancy is non-material or
19 material.

20 "If the discrepancy is non-material, according to the
21 Court, the transcript will be admitted as an exhibit."

22 So I took from that that the parties were stipulating
23 that the transcript would be admitted, and it struck me as odd
24 that the only ones that would be admitted were the ones where
25 there was a dispute as to the content.

1 So I assume that there must have been a default
2 background rule that wasn't expressed but was intended that
3 said that all transcripts would be admitted if there was no
4 dispute.

5 And then with respect to the disputed ones, if it's a
6 non-material discrepancy, it would be admitted; if it was a
7 material discrepancy, it wouldn't be admitted, but now you're
8 telling me something different so I'm confused.

9 MR. C. MATTHEW RITTGERS: I understand, Your Honor.
10 Neal?

11 MR. SCHUETT: Your Honor, I think the issue was there
12 were some accuracy issues that we wanted to work out, so we
13 didn't want to say they were all admitted and now we have a
14 dispute, so that was part of the issue.

15 THE COURT: But with respect to the ones that there
16 was no dispute, were you agreeing that they would be admitted
17 as exhibits?

18 MR. SCHUETT: Given that we have stipulated that
19 they're accurate, it's my understanding in this circuit that
20 they will be admitted, Your Honor. There's nothing to stand
21 in the way as long as they're accurate.

22 The Sixth Circuit says as long as they're accurate and
23 non-prejudicial, they're accurate, they're non-prejudicial.

24 THE COURT: Well, I think the Sixth Circuit pattern
25 instruction with regard to transcripts says that the

1 transcripts are not the evidence, that the recording is the
2 evidence.

3 MR. SCHUETT: Correct. Based on the law that the
4 parties talked about, that if it is found to be accurate, it's
5 practice to let them go back, and then if there are
6 discrepancies, they should rely on the recording.

7 THE COURT: Okay. So to the Court, the only
8 distinction is whether or not they're going to be able to go
9 back to the jury room during deliberation.

10 So do I understand you to be agreeing to that. To the
11 extent the transcripts are stipulated as accurate, they can be
12 admitted and go back to the jury room with deliberations.

13 And that with respect to any one where there's a
14 discrepancy, if it's non-material, if the Court rules it's
15 non-material, that can also go back to the jury room, but if
16 it's a material discrepancy, it can't go back, is that --

17 MR. SCHUETT: That is correct, Your Honor, though we
18 would maintain for the record our motion that an incomplete
19 transcript is prejudicial, though, again, the Sixth Circuit
20 says the prejudicial issue is the accuracy, so just to note
21 that for the record, Your Honor.

22 THE COURT: Okay. Is that your understanding as
23 well, Mr. Singer?

24 MR. SINGER: It's my understanding if the recording
25 is admitted into evidence, and there's an accurate transcript

1 that the parties have stipulated to, that will also be
2 admitted into evidence. All of it goes back to the jury.

3 THE COURT: Okay. All right. Then I think we're on
4 the same page. Yeah? Okay.

5 So I think we're ready, at this point, to do the portion
6 of the transcript and see if we can ascertain what the word
7 is.

8 MR. SINGER: May I approach, Your Honor?

9 THE COURT: You may. Go ahead, Mr. Singer.

10 MR. SINGER: I'm sorry, Your Honor --

11 THE COURT: Go ahead.

12 MR. SINGER: -- to play the recording?

13 THE COURT: Well, tell me what the discrepancy is
14 around it and then play the recording.

15 MR. SINGER: Okay. I see. If you turn to the second
16 page of the transcript, the portion that is blocked off is the
17 portion that is on the thumb drive that we provided, and then
18 the discrepancy is the word, I've highlighted it, "I've."

19 THE COURT: That's the entire discrepancy is with
20 respect --

21 MR. SINGER: That's the discrepancy. I think it's
22 the defense position that it's "it's."

23 MR. SCHUETT: That is correct, Your Honor.

24 THE COURT: Okay. And did you give me the thumb
25 drive, or how were you planning on --

1 COURTROOM DEPUTY: I've got it.

2 MR. C. MATTHEW RITTGERS: Your Honor, just to
3 clarify. It's "I've," it cuts out, and then it's "it's." So
4 it would say I've, ellipsis, it's been.

5 THE COURT: I see. So you admit the word I've, or
6 contraction I've, and --

7 MR. C. MATTHEW RITTGERS: I believe it's I've, break,
8 it's.

9 THE COURT: Okay.

10 MR. SINGER: I'm sorry. That wasn't my understanding
11 of the discrepancy.

12 MR. C. MATTHEW RITTGERS: No, I'm not -- and that
13 might have been mis-communicated. I'm not saying that the
14 government is trying to misinterpret or misrepresent.

15 THE COURT: So is it all right to play it in open
16 court from your perspective?

17 MR. SINGER: Sure.

18 THE COURT: Okay. Can you play it.

19 (Audio recording played in open court.)

20 THE COURT: Play it again.

21 (Audio recording played in open court.)

22 THE COURT: Just one more time.

23 (Audio recording played in open court.)

24 THE COURT: I believe the transcript is accurate. I
25 don't hear "it's" in there. Having said that, I don't see

1 there's any reason you can't argue to the jury if you want,
2 but the word -- they should listen, and if they hear it
3 differently, they can go with what they hear on the recording,
4 but I don't think that this transcript is inaccurate. I would
5 intend to admit this pursuant to the parties' stipulation.

6 I just realized that last night I promised to send you
7 some remaining thoughts on some slides, and I failed to do
8 that, so where are we at on those slides? Do you need
9 direction from the Court yet? I apologize.

10 MR. C. MATTHEW RITTGERS: No problem, Your Honor. It
11 was just two slides, I believe. And it was the slide related
12 to the scotch and cigars gift. There were three videos in
13 total. And the objection, I believe, was playing the second
14 and third video.

15 THE COURT: That's right. I need to go back and
16 listen to those once again. I'm going to take a brief recess
17 before the jury comes in. I assume you can just cut those if
18 we need to cut those, those slides? You can just skip over
19 them?

20 MR. C. MATTHEW RITTGERS: If we have to cut the
21 slides, we can cut them, and that's the discussion about --

22 THE COURT: Right. I know. I apologize. It
23 completely slipped my mind. All right. Let's take a brief
24 recess.

25 (Brief recess.)

1 THE COURT: I've now had an opportunity to review the
2 material on Slide 63 and 64. Can the government remind me
3 what the nature of their objection to those slides is?

4 MS. GLATFELTER: Yes. It was both hearsay and a 403
5 objection.

6 THE COURT: And what's the nature of the 403
7 argument?

8 MS. GLATFELTER: That information is cumulative to
9 the other information in the previous recordings, so there's
10 one recording that covers the subject.

11 Going into the personal details for two additional
12 segments is just emphasizing those personal details. The jury
13 already has that information in the first recording. There's
14 nothing added by those second and third recordings.

15 MR. C. MATTHEW RITTGERS: Your Honor, the first clip
16 is a gift that is given to Mr. Sittenfeld, which is scotch and
17 cigars. It's a very brief video recording where the
18 undercover agents indicate to Mr. Sittenfeld that this gift is
19 a congratulations because his wife is pregnant.

20 The government stops the transcript and the video right
21 after the line, "You've worked your ass off for us."

22 What is then missing is a few minutes of back and forth
23 discussion, which goes to P.G.'s thoughts in his mind as to
24 what these gifts were for, and they talk about childhood and
25 parenthood and pregnancy for under five minutes.

1 I mean, we have 20 hours of tapes here, it's under five
2 minutes where they're talking about childhood and parenthood,
3 which now that one line, which it might be more magnified in
4 the first clip, becomes a little less magnified when you get
5 the full context of that interaction.

6 MS. GLATFELTER: Your Honor, I just wanted to make
7 clear that the beginning portion, I don't believe which is
8 included in the first slide of the defendant's, they're
9 talking about the project.

10 So they talk about the project, they exchange the gift,
11 and then there are these other segments that they want to add
12 about his wife's pregnancy, all right?

13 So they've clipped the portion about the 435 discussion,
14 and then they've added three minutes back about the pregnancy.
15 And I think that's 403 cumulative. Certainly in opening
16 statements, it is.

17 MR. C. MATTHEW RITTGERS: This is just opening
18 statements. I'm highlighting after the gift is shown, the
19 discussion that flows after the gift, which is where that one
20 comment is on all the baby talk and parenthood talk.

21 So it's the government's position that this was a bribe
22 because he said, "You worked your ass off for us," and there's
23 five minutes of discussion about childhood and pregnancy and
24 parenthood, and the government wants to cut half of that
25 discussion out.

1 If the government wants to play the entirety of this and
2 the transcript in their trial, we have no objection.

3 THE COURT: Yeah. It's opening. I'm going to allow
4 it, but I don't think there's -- I don't know if the
5 government is making a hearsay objection, but I don't think
6 there's a hearsay issue.

7 The fact that it's cumulative, two minutes or three
8 minutes of additional time in openings, so I'm not too swayed
9 by the cumulativeness issue.

10 And with regard to 403(b), the government hasn't
11 identified what the prejudice they think would exist as a
12 result of playing that. So I guess I'd be willing to hear
13 you, Ms. Glatfelter, but I haven't heard anything about
14 prejudice yet.

15 MS. GLATFELTER: Sure. I think this goes -- I'm
16 sorry for not clarifying. I think this goes to sympathy. I
17 think that the underlying purpose of showing these clips is
18 what was done in voir dire also, to talk about the defendant's
19 wife's pregnancy, and here to put that in front of the jury
20 again.

21 I think that the Court is going to instruct the jury at
22 the end of this case that they can't consider sympathy. It's
23 improper. They consider the evidence before the Court.

24 And so while we can articulate, perhaps, a reason why
25 this evidence might come in, I think it's 403. It's

1 cumulative here.

2 THE COURT: All right. I'm going to overrule that
3 and allow that to be played during the openings. Does that
4 take care of all the outstanding issues?

5 MR. C. MATTHEW RITTGERS: I believe it does, Your
6 Honor.

7 THE COURT: Okay. Mr. Singer, I know the government
8 filed papers with regard to the jury questionnaire issue.

9 I just want to let you know I'm planning, during the
10 first jury break, to hear from the movant on that issue, so if
11 the government wants to present anything further on that
12 issue, we'll be addressing that during the jury break.

13 MR. SINGER: Thank you, Your Honor.

14 THE COURT: All right. Are we ready to bring in the
15 jury?

16 MS. GLATFELTER: Yes, Your Honor. Thank you.

17 COURTROOM DEPUTY: Judge, we're missing one.

18 THE COURT: Oh, we're not ready to bring in the jury
19 yet. Do we have any ETA on the missing one?

20 COURTROOM DEPUTY: I do not. We can take a break,
21 and I can look into it.

22 THE COURT: Okay. I guess we're going to take a
23 break and try to find our juror.

24 (Brief recess.)

25 THE COURT: I'm advised we have a complete jury, so I

1 think we're ready to proceed.

2 (Jury in at 9:46 a.m.)

3 THE COURT: Ladies and gentlemen of the jury, I hope
4 you had a restful evening and are looking forward to our trial
5 starting this morning.

6 I'm going to give a few preliminary instructions now
7 before we hear from the parties this morning, and then we'll
8 hear from the parties and then move on to the witnesses.

9 Ladies and gentlemen, the following remarks are intended
10 to serve as your introduction to the trial in which you are
11 participating.

12 These comments are not a substitute for the detailed
13 instruction on the law and the evidence that I will give you
14 at the conclusion of this case before you retire to
15 deliberate, rather these remarks are a simple explanation of
16 your duties and responsibilities and the basic principles of
17 law that are likely to be involved in this case.

18 Your purpose as jurors is to find and determine the
19 facts. Under our system of criminal procedure, you are the
20 sole judge of the facts. If at any time I should make any
21 comment regarding the facts, you are at liberty to disregard
22 it.

23 It is especially important that you perform your duty of
24 determining the facts diligently and consciously, for
25 ordinarily there is no means of correcting an erroneous

1 determination of the facts by the jury.

2 On the other hand and with equal emphasis, I instruct you
3 that the law as given by the Court constitutes the only law
4 for your guidance. It is your duty to follow the law as I
5 give it to you, even though you may disagree with the law.

6 So let me start with a procedural matter. If you want to
7 take notes during the course of the trial, you may do so.
8 There should be a pen and pad of paper for each of you to use
9 if you like.

10 However, it is difficult to take detailed notes and pay
11 attention to what the witnesses are saying at the same time.
12 If you do take notes, be sure that your taking of notes does
13 not interfere with your listening to and considering all the
14 evidence.

15 Also, if you take notes, do not discuss them with anyone
16 before you begin your deliberations. Do not take the notes
17 with you at the end of the day. Be sure to leave them -- are
18 we going to leave them here, Scott, or in the jury room, the
19 notes?

20 COURTROOM DEPUTY: It doesn't matter.

21 THE COURT: Okay. Be sure to leave them in the jury
22 room before you leave at the end of the day.

23 If you choose not to take notes, remember it is your own
24 individual responsibility to listen carefully to the evidence.
25 You cannot give this responsibility to someone who is taking

1 notes. Notes should only be used to refresh the recollection
2 of the juror who took the notes.

3 You should not use your notes in jury deliberations to
4 prove to other jurors that your notes are, in fact, what a
5 witness actually said. It is only your impression of what the
6 witness said. We depend on the judgment of all members of the
7 jury. You are all responsible for remembering the evidence in
8 this case.

9 Remember that notes are only aids to memory and should
10 not be given precedent over your own independent recollection
11 of the facts. You must not allow your note taking to distract
12 your attention from the proceedings.

13 You will notice that we do have an official court
14 reporter making a record of the trial. However, you will not
15 have typewritten transcripts of this record available to you
16 to use in reaching your decision in this case.

17 You are to determine the facts in this case solely from
18 the evidence, which consists of the testimony of witnesses and
19 the exhibits that are received into evidence.

20 Questions asked by the attorneys are not evidence. Only
21 the answers given by the witnesses are evidence. Statements
22 and arguments made by the attorneys are not evidence. They
23 may, however, enter in agreements or stipulations as to facts
24 that are not disputed, and if they do, you are to accept those
25 agreed-upon facts as evidence.

1 On occasion, I may tell you that I'm taking judicial
2 notice of certain facts. You may then accept those facts as
3 true, but you are not required to accept them. It is up to
4 you to decide what inferences are to be drawn from the
5 evidence and to decide what facts are established by the
6 evidence.

7 You are to consider only the evidence in this case. But
8 in your consideration of the evidence, you are not limited to
9 the bald statements of the witnesses. In other words, you are
10 not limited solely to what you see and hear as the witnesses
11 testify.

12 You are permitted to draw, from the facts which you find
13 have been proved, such reasonable inferences as you feel are
14 justified in light of your experience.

15 You may not consider as evidence anything you may have
16 read or heard about the case outside the courtroom, whether
17 before or during the trial. Please do not try to seek out
18 information about this trial from any source outside the
19 confines of this courtroom.

20 This means that during the trial, you must not conduct
21 any independent research about this case, the matters in this
22 case, and the individuals and agencies involved in the case.

23 In other words, you should not consult dictionaries or
24 reference materials, search the internet, websites, social
25 media, or use any other electronic or other tools to obtain

1 information about this case or to help you decide this case.

2 Now I'm going to talk a little bit about direct and
3 circumstantial evidence. Some of you may have heard the terms
4 direct evidence and circumstantial evidence.

5 Direct evidence is simply evidence like the testimony of
6 an eyewitness which, if you believe it, directly proves a
7 fact. If a witness testified that he saw it raining outside,
8 that would be direct evidence that it is raining.

9 Circumstantial evidence is simply a chain of
10 circumstances that indirectly proves the fact. If someone
11 walked into the courtroom wearing a raincoat covered with
12 drops of water and carrying a wet umbrella, that would be
13 circumstantial evidence from which you might conclude it was
14 raining.

15 It is your job to decide how much weight to give the
16 direct and circumstantial evidence. The law makes no
17 distinction between the weight that you should give to either
18 one, nor does it say that either is any better evidence than
19 the other. You should consider all the evidence, both direct
20 and circumstantial, and give it whatever weight you believe it
21 deserves.

22 Another part of your job as jurors is to decide how
23 credible or believable each witness is. That is your job, not
24 mine. It is up to you to decide if a witness's testimony was
25 believable, and how much weight you think it deserves.

1 You are free to believe everything that a witness said,
2 or only part of it, or none of it at all, but you should act
3 reasonably and carefully in making these decisions. Let me
4 suggest some things for you to consider in evaluating each
5 witness's testimony.

6 Ask yourself if the witness was able to clearly see or
7 hear the events. Sometimes even an honest witness may not
8 have been able to clearly see or hear what was happening and
9 make a mistake.

10 Ask yourself how good the witness's memory seemed to be.
11 Did the witness seem accurately to remember what happened.
12 Ask yourself if there was anything else that may have
13 interfered with the witness's ability to perceive or remember
14 the events.

15 Ask yourself how the witness acted while testifying. Did
16 the witness appear to be honest, or did the witness appear to
17 be lying.

18 Ask yourself if the witness has any relationship with the
19 government or the defendant, or anything to gain or lose from
20 the case that might influence the witness's testimony.

21 Ask yourself if the witness had any bias, prejudice, or
22 reason for testifying that might cause the witness to lie or
23 slant testimony in favor of one side or the other.

24 Ask yourself if the witness testified inconsistently
25 while on the witness stand, or if the witness said or did

1 something at any other time that is inconsistent with what the
2 witness said while testifying.

3 If you believe the witness was inconsistent, ask yourself
4 if this makes the witness's testimony less believable.
5 Sometimes it may, other times it may not. Consider whether
6 the inconsistency was about something important, or about some
7 unimportant detail. Ask yourself if it seemed like an
8 innocent mistake or if it seemed deliberate.

9 And ask yourself how believable the witness's testimony
10 is in light of all the other evidence. Was the witness's
11 testimony supported or contradicted by other evidence that you
12 found believable.

13 If you believe that a witness's testimony was
14 contradicted by other evidence, remember that people sometimes
15 forget things, and that even two honest people who witness the
16 event may not describe it exactly the same way.

17 These are only some of the things you may consider in
18 deciding how believable each witness was. You may also
19 consider other things that you think shed light on the
20 witness's believability. Use your common sense and your
21 everyday experience in dealing with other people, and then
22 decide what testimony you believe and how much weight you
23 think it deserves.

24 Now, the defendant, Mr. Sittenfeld, may or may not
25 testify at this trial. A defendant has the absolute right not

1 to testify. The fact that he may not testify should not be
2 considered by you in any way. Do not even discuss it in your
3 deliberation. Remember that it is up to the government to
4 prove the defendant guilty beyond a reasonable doubt. It is
5 not up to the defendant to prove that he is innocent.

6 Sometimes evidence will be admitted through what is
7 called a limited purpose only. When I instruct you that an
8 item of evidence has been admitted for a limited purpose, you
9 must consider it only for the limited purpose and no other
10 purpose.

11 No statement, ruling, remark, or comment that I may make
12 during the course of the trial is intended to indicate my
13 opinion as to how you should decide the case, or influence you
14 in any way in your determination of the facts.

15 At times, I may ask questions of witnesses. If I do, it
16 is for the purpose of bringing up matters which I feel should
17 be brought out, and not in any way to indicate my opinion
18 about the facts, or to indicate the weight I feel you should
19 give to the testimony of the witness.

20 I may also find it necessary to admonish the attorneys.
21 If I do, you should not show prejudice toward an attorney or
22 his or her client because I have found it necessary to
23 admonish that attorney.

24 During the trial, it may be necessary for me to confer
25 with the attorneys from time to time out of your hearing

1 concerning questions of law or procedure that require
2 consideration by the court alone.

3 On some occasions, you may be excused from the courtroom
4 as a convenience to you and to us while I discuss such matters
5 with the attorneys, but we will try to limit such
6 interruptions as much as possible.

7 You should remember at all times, though, the importance
8 of the matter you are here to determine, and be patient, even
9 though the case may seem to go slowly.

10 The parties may sometimes present objections to some of
11 the testimony or to the evidence. It is the duty of an
12 attorney to object to evidence that he or she believes may not
13 properly be offered, and you should not be prejudiced in any
14 way against an attorney who makes objections, or against the
15 party whom the attorney represents.

16 At times, I may sustain objections or direct that you
17 disregard certain testimony or exhibits. You must not
18 consider any evidence to which an objection has been sustained
19 or that I've instructed you to disregard.

20 Let's talk a little bit about the presumption of
21 innocence and the burden of proof. The defendant has pled not
22 guilty to the crimes charged in the indictment. The
23 indictment is not any evidence at all of guilt, it is just the
24 formal way that the government tells the defendant what crimes
25 he is accused of committing. It does not even raise any

1 suspicion of guilt.

2 Instead, the defendant starts the trial with a clean
3 slate, with no evidence at all against him, and the law
4 presumes he is innocent. This presumption of innocence stays
5 with him unless and until the government presents evidence
6 here in court that overcomes the presumption, and convinces
7 you beyond a reasonable doubt that the defendant is guilty.

8 This means that the defendant has no obligation to
9 present any evidence at all, or to prove to you in any way
10 that he is innocent. It is up to the government to prove that
11 he is guilty, and this burden stays on the government from
12 start to finish.

13 You must find the defendant not guilty of a given count
14 unless the government convinces you beyond a reasonable doubt
15 that he is guilty of the count. To do that, the government
16 must prove every element of a crime charged beyond a
17 reasonable doubt.

18 Proof beyond a reasonable doubt does not mean proof
19 beyond all possible doubt. Possible doubts, or doubts based
20 purely on speculation, are not reasonable doubts.

21 A reasonable doubt is based on reason and common sense.
22 It may arise from the evidence, the lack of evidence, or the
23 nature of the evidence.

24 Proof beyond a reasonable doubt means proof that is so
25 convincing that you would not hesitate to rely and act on it

1 in making the most important decisions in your own lives.

2 If you are convinced the government has proved the
3 defendant guilty beyond a reasonable doubt, you will say so by
4 returning a guilty verdict.

5 If you are not convinced, you will say so by returning a
6 not guilty verdict.

7 With regard to the charges here, the defendant,
8 Mr. Sittenfeld, is charged with six counts in the indictment.
9 I believe yesterday I mistakenly said four counts. That was
10 my mistake.

11 He has pled not guilty to all six counts. Let me note
12 that the government must prove each of the counts separately;
13 that is, if you find the government has proven the necessary
14 elements for one count, that does not mean that the defendant
15 is guilty of the other counts.

16 Likewise, if you find the government has failed to prove
17 one count, that does not mean that you must find the defendant
18 not guilty as to the other counts.

19 Rather, you should treat each count separately and decide
20 whether the government has proven all of the necessary
21 elements as to that count.

22 At the end of the trial, before you deliberate, I will
23 explain each of the charges, and the elements that the
24 government needs to prove for each, in extensive detail. For
25 now let me just note that, as I've already mentioned, there

1 are six counts here.

2 The first and second counts are two counts of honest
3 services wire fraud. In each of these two counts, the
4 government alleges that Mr. Sittenfeld, an elected member of
5 the Cincinnati City Council, knowingly devised and intended to
6 devise a scheme to defraud the citizens of Cincinnati and the
7 Cincinnati City Council of his honest services.

8 The third and fifth counts are two counts of bribery
9 concerning programs receiving federal funds. These two counts
10 charge Mr. Sittenfeld with corruptly soliciting and accepting
11 a thing of value from a person while intending to be
12 influenced in connection with local government business.

13 The fourth and sixth counts are two counts of attempted
14 extortion under color of official right. These two counts
15 charge Mr. Sittenfeld with knowingly attempting to obstruct,
16 delay, and affect commerce by extortion.

17 As I mentioned, I will explain all of that in more detail
18 later in the trial.

19 I'd like to say just a few words about your conduct as
20 jurors. We've covered all this before I sent you home last
21 night, so I'll try to streamline it a little bit.

22 But as we've discussed, you have a number of
23 responsibilities in ensuring that the parties receive a fair
24 trial.

25 First, you must not decide any issue or form any opinion

1 in this case until you've heard all the evidence, been
2 instructed by the Court on the law, and retired to the jury
3 room to deliberate.

4 Second, you cannot allow anyone to discuss this case in
5 your presence outside this courtroom. You must not talk to
6 the parties, attorneys, witnesses, or to me, under any
7 circumstances. Nor can you talk to anyone else, such as
8 family or friends, about this case.

9 The only people with whom you can discuss the case are
10 your fellow jurors. But even on that front, you cannot
11 discuss it with them until the presentation of the evidence is
12 over and the case is submitted to you.

13 So once again, don't begin discussing this like during
14 breaks or at lunch, or what the evidence just was, anything
15 like that.

16 After the verdict is announced, you can discuss the case
17 with others, but not before. And this prohibition on
18 communications with others extends to electronic
19 communications through cell phones, tablets, or other similar
20 devices.

21 More specifically, you may not communicate with anyone
22 about the case on your phone or computer, through email, text
23 messaging, social media, any website, or any other means of
24 communication, and that would include, you know, any posting
25 on any kind of social media.

1 Even if you're not back and forth communicating, you
2 can't say, oh, here's what I heard today, anything of that
3 nature.

4 Third, since you must keep an open mind until instructed
5 by the Court to begin your deliberations, as I already noted,
6 it's important you do not read or listen to any media accounts
7 about this case.

8 Such accounts may be inaccurate, or they may contain
9 matter which is not proper evidence for your consideration.
10 You must base your verdict solely on what is brought to your
11 attention in court.

12 If anyone tries to talk to you about this case, please
13 bring it to the Court's attention immediately, but do not
14 discuss it with fellow jurors.

15 Likewise, if you inadvertently read, see, or hear
16 anything in the media, inform the Court.

17 Fourth, do not try to do any research or undertake any
18 investigation of the case on your own. This includes not
19 personally exploring any of the sites that we may discuss at
20 trial, nor can you access materials such as the internet,
21 websites, or social media, or use any or electronic or other
22 tools to obtain information about this case or help you decide
23 the case.

24 Fifth, please do not converse, whether inside or outside
25 the courtroom, with any of the parties or their attorneys or

1 any witness. By this I mean not only do not talk about the
2 case, but do not talk to them at all, even to pass the time of
3 day. In no other way can the parties be assured of the
4 absolute impartiality to which they are entitled from you as
5 jurors.

6 I assure you you will not be considered rude for failing
7 to talk to someone involved in this case. Everyone is bound
8 by the same rule.

9 Finally, as I said at the outset, do not attempt to form
10 any opinion until after all the evidence has been presented.

11 The trial is going to proceed in the following order.
12 First, the parties have the opportunity to make opening
13 statements. The government has the opportunity to go first.
14 The defendant will then have an opportunity to make his
15 opening statement.

16 What a party says in opening statements is not evidence.
17 The statements simply serve to introduce the evidence the
18 party making the statement intends to produce at trial.

19 Second, after the openings are over, the government will
20 introduce evidence in support of the charges contained in the
21 indictment.

22 Third, after the government has presented its evidence,
23 the defendant may present evidence but is not obliged to do
24 so.

25 The burden is always on the government to prove every

1 element of the offenses charged beyond a reasonable doubt.

2 The law never imposes on a defendant in a criminal case the
3 burden of calling any witnesses or introducing any evidence.

4 Fourth, after the defendant rests his case, the
5 government will have an opportunity to present what is called
6 a rebuttal case or, in other words, provide additional
7 evidence in response to new topics or new evidence that the
8 defendant introduced. While the government can do so, though,
9 it has no obligation to do so.

10 Fifth, I will instruct you on the applicable law.

11 And finally, at the conclusion of the evidence, and after
12 I've instructed you on the applicable law, each party will
13 have the opportunity to present oral argument in support of
14 its case to you, the jury.

15 These are called closing arguments. What is said in a
16 closing argument is not evidence, just as what is said in
17 opening statements is not evidence. But while the arguments
18 are not evidence, they are designed to allow the parties to
19 present to you their contention as to what they believe the
20 evidence has shown and what inferences they believe you should
21 draw from that evidence.

22 In terms of order, just like with the evidence, the
23 government goes first on its closing, followed by the
24 defendant, and then the government has a right to provide
25 rebuttal argument if it wishes.

1 After closing arguments, I will give you some final
2 instructions, and then you will retire to the jury room to
3 deliberate until you reach a unanimous verdict.

4 I'll explain a lot more about that process at the end of
5 the trial. I just want to note up front that your verdicts on
6 each of the six counts must be unanimous.

7 So as I just noted, we'll begin by affording
8 Ms. Glatfelter an opportunity to make an opening statement, in
9 which she will explain the issues in the case and summarize
10 the facts that she expects the evidence will show from the
11 government's point of view.

12 When she finishes, Mr. Rittgers will have an opportunity
13 to present his opening statement on behalf of Mr. Sittenfeld.

14 Again, the opening statements of the parties are not
15 evidence in the case, nor are they instructions on the law,
16 which will come only from me.

17 Nevertheless, these statements and arguments are intended
18 to help you understand the issues and the evidence to be
19 presented in this case, as well as the positions taken by both
20 sides.

21 You may see some charts during the opening statements of
22 the parties. The charts are not evidence. They are simply to
23 assist you in following what the parties are saying during
24 their opening statements. Therefore, you should not consider
25 any charts that are presented by the parties during their

1 opening arguments as evidence during your deliberations.

2 So I ask that you now give Ms. Glatfelter your close
3 attention, as I recognize her for the purpose of making her
4 opening statement.

5 MS. GLATFELTER: Thank you, Your Honor.

6 May it please the Court, opposing counsel, ladies and
7 gentlemen of the jury. Good morning.

8 This case is about an ambitious politician who sold his
9 service and betrayed the citizens that he was elected to
10 serve.

11 In short, the evidence will show that the defendant
12 exchanged his power for money. It's illegal to do that.
13 it's called bribery.

14 It's illegal for a politician to receive campaign
15 contributions knowing that they're in exchange for his
16 official action, his specific official action.

17 And the evidence will show that's exactly what the
18 defendant did in this case, because he got caught, and he got
19 caught on tape doing it.

20 During this trial, you're going to hear the defendant's
21 own words. Right after he agreed to exchange \$20,000 for a
22 vote on a local project, the defendant said, "I can deliver
23 the vote."

24 Later, when the defendant received those contributions,
25 some of those contributions, he said, "I'm ready to shepherd

1 the votes as soon as it gets to council."

2 When he picked up additional checks a few weeks later, he
3 said, "Don't let these be my famous last words, but I can
4 always get a vote on my left and my right."

5 After he received two more checks later in the fall of
6 2019, he said, "Your nickels are greatly appreciated."

7 And when the project that he exchanged a campaign
8 contribution for, when that project encountered difficulties,
9 he said, and excuse my language, this is a quote, "I'm on it
10 like stink on shit."

11 This case is straightforward. It boils down to a basic
12 question. Did the defendant accept campaign contributions
13 knowing that they were in exchange for his specific official
14 action.

15 At a broad level, the evidence in this case will show
16 that there was a local developer, and he had a project called
17 435 Elm. That project required the approval of city council.

18 But the developer's efforts to get that approval had
19 stalled for nearly 18 months. And the evidence will show that
20 the defendant, who is a member of city council at the time,
21 made a deal with the developer's investors to make those
22 difficulties go away.

23 They gave him campaign contributions in exchange for a
24 vote. And after receiving these campaign contributions, the
25 evidence will show that the defendant tried to get the project

1 moving. Six months after receiving those contributions, the
2 defendant helped the investors by voting to sell the property.
3 The defendant's actions did not stop with the vote.

4 After receiving \$20,000 more in contributions, the
5 defendant pressured another government official to take action
6 favorable to the investors.

7 In short, the evidence in this case will show over an
8 18-month period, that the defendant exchanged \$40,000 in
9 campaign contributions for his action on the 435 Elm project.

10 Now, the evidence in this case is going to show that
11 these campaign contributions were important for the defendant,
12 and that's because he had aspirations to seek a higher office,
13 which meant that he needed to raise more money for a larger
14 campaign.

15 The evidence will show that the defendant had been a
16 politician who was elected to serve on city council for the
17 City of Cincinnati for over a decade.

18 And as an elected member of council, he was instructed to
19 serve the public. In fact, every day for the last ten years,
20 he received a salary to do that. He was paid a salary to
21 serve the citizens of Cincinnati and, in return, he owed the
22 public a duty of honesty and a duty of loyalty.

23 A politician violates his duty to the public when he
24 engages in bribery, when he exchanges his power for money.
25 And the evidence will prove that's what the defendant did in

1 this case. The United States will prove it, through the
2 defendant's own words and actions, in context, captured on
3 recordings that you will see and you will hear during this
4 trial.

5 Now, members of the jury, as Judge Cole explained to you,
6 you're going to hear a lot of evidence during the course of
7 this trial, but this is fundamentally a simple case, and we
8 are going to do our best to respect your time, your summer,
9 and we're going to streamline that as much as we can.

10 My job in opening statement, as Judge Cole said, is a
11 preview. It's just a preview of the type of evidence you're
12 going to see and you're going to hear in this case. And to do
13 that, I'm going to break this down into three parts.

14 First, I'm going to start with an overview of what the
15 evidence is going to show in this case, the specific facts.
16 And then I'm going to talk about how the United States will
17 provide that evidence to you, what form you're going to see,
18 and how you're going to hear it. And finally, a very brief
19 overview of the charges against the defendant.

20 Now, while I do these three things, I'm going to refer to
21 my notes, and that's because I want to be very precise with my
22 words as I talk about the evidence you're going to see and
23 hear during this trial.

24 Before I get started on my overview of the evidence, I
25 want to take a minute to mention a few brief concepts to keep

1 in mind as you hear the evidence in this case and to
2 contextualize my overview.

3 Now, you'll hear me use terms like "development" and
4 "redevelopment project." And you'll hear those kinds of terms
5 throughout the trial. But that's not because you need to
6 understand the intricacies of a development project or a
7 redevelopment project. Rather, you'll hear those terms
8 because that is the subject of the bribe in this case. That's
9 what the money was paid for, a development project.

10 Likewise, you're going to hear about campaign
11 contributions. More specifically, you're going to hear about
12 contributions to what is known as a political action
13 committee, or a PAC, for short.

14 But let me be clear. This case is not about PACs. It's
15 not about the limits of those PACs, or the rules that apply to
16 those PACs. Rather, you're going to hear about campaign
17 contributions and a PAC because the evidence will show that's
18 the form of the bribe that was paid in this case.

19 And the defendant said that these contributions would
20 specifically benefit him, and the government has an obligation
21 to prove that.

22 All right. So let me get started on an overview of what
23 the evidence will show.

24 Now, during the relevant time period, which in this case
25 is 2018 to 2019, it's roughly an 18-month period of time, the

1 evidence will show that during that period of time, the
2 defendant was a member of city council in the City of
3 Cincinnati. The council has nine members. They are elected
4 by the citizens of Cincinnati.

5 And for legislation to pass out of council, it takes five
6 votes, takes a majority. But there's also a mayor for the
7 City of Cincinnati, and the mayor can veto that legislation.
8 To override the mayor's veto, it takes six votes.

9 Now you'll hear that, in terms of real estate, the City
10 of Cincinnati is what's called a developed city. That means
11 if someone wants to build something within the city, there's
12 not a lot of undeveloped land to use.

13 So what that means is that the person would most likely
14 have to purchase something that's already built, and they
15 would have to repurpose it, or they would have to redevelop it
16 in some way.

17 But that also means that city council and the mayor have
18 a big role to play in development projects in the city. For
19 example, the city might own the land that the developer wants
20 to use to build something on, all right?

21 And so they might have to go to the city and ask for the
22 city to sell that land or to lease it to them, and city
23 council would have to approve that.

24 The city might need to change the zoning to allow the
25 specific type of project to be built on the land they want to

1 use, all right.

2 And for bigger projects, the developer may want certain
3 or they may need tax incentives, so they might need city
4 council's approval for those tax incentives. That is a city
5 council item they would have to vote on.

6 Now, against this backdrop, you're going to hear about an
7 aspiring local developer named Mr. Ndukwe. Mr. Ndukwe goes by
8 the nickname Chin, and that's how we'll refer to him
9 throughout this opening, and that's how you'll hear him
10 referred to during this trial.

11 He's a retired professional football player.

12 Now, Chin had purchased a financial interest in a piece
13 of property that we're going to refer to throughout this trial
14 as 435 Elm.

15 That piece of property is downtown, in the City of
16 Cincinnati. It's actually in the heart of the city. You'll
17 see maps and aerials and photos of it during trial.

18 Mr. Ndukwe, or Chin, wanted to redevelop this piece of
19 real estate, but he needed the city's help to do it because
20 the city owned that piece of property. And he needed the sale
21 of the property approved by city council.

22 But in 2018, Chin's project was stalling. He wanted a
23 development agreement with the city so he could go forward and
24 develop that piece of land, but he was not even close to
25 obtaining one.

1 The defendant knew Chin, and the defendant had known Chin
2 for several years. The defendant had actually solicited
3 contributions from Chin on many occasions, and Chin had given
4 him financial contributions for his campaigns in the past.

5 Now, you'll hear in the fall of 2018, the defendant
6 called Chin to solicit \$10,000 in contributions. And for
7 context, this was in September of 2018. We'll talk about
8 these dates throughout trial, but just to give you an
9 overview.

10 This September 2018 call led to a series of additional
11 calls later in the fall. These calls provide some context to
12 the evidence that you're going to hear at trial.

13 During these calls between Chin and the defendant, the
14 defendant confirmed that he knew about Chin's 435 Elm project
15 and his difficulties getting approval because the mayor was
16 supposedly holding up the project.

17 The defendant also told Chin that Chin needed to
18 financially support him. Specifically, the defendant told
19 Chin that he has obligations to do the things he needs to be
20 to be a successful candidate, and he wanted Chin to support
21 him.

22 The defendant said, and I quote, "You don't want me to be
23 like, Chin, I love you but..." in the context of knowing that
24 Chin was seeking a development agreement for 435 Elm that
25 would later be voted on by the city, the defendant said to

1 Chin, "You don't want me to be like, I love you Chin, but..."
2 you'll hear that entire conversation during trial.

3 The defendant told Chin to round up five LLC
4 contributions before the deadline. Now, LLC just refers to a
5 limited liability company. It's a type of entity that is
6 permitted to make political contributions.

7 The evidence will show that by "deadline," the defendant
8 was referring to election day in 2018, in the fall. And
9 that's when a ballot measure would likely pass that would
10 limit the amount of LLC contributions that a Cincinnati
11 candidate could receive from an individual.

12 If the ballot measure passed, city council could only
13 receive one LLC check per person going forward.

14 Now, the details of the ballot measure are not important.
15 What's important is that the defendant was using it to
16 pressure Chin for additional contributions before the
17 deadline.

18 Indeed, during one of these calls that you'll hear, the
19 defendant confirmed, and I quote, "You'll deliver the goods
20 before Tuesday."

21 During the last call in the series, Chin said his
22 investors would not be able to meet with the defendant before
23 Tuesday's deadline, however, they wanted to contribute.

24 He said if his investors were going to contribute, "his
25 investors" meaning the 435 Elm investors were going to

1 contribute to the defendant, Chin said that they wanted to
2 know that it was going to be a yes vote for sure on 435 Elm.

3 Now, the defendant responded, "Obviously, nothing can be
4 illegal. Illegally nothing can be a quid pro quo, and I know
5 that's not what you're saying either."

6 The defendant told Chin that he was super
7 pro-development, though, and they would discuss it more in
8 person.

9 And he also told him he wanted to give the investors
10 confidence that they were investing in a winning endeavor.

11 Chin, the defendant, and one of Chin's investors,
12 Rob Miller, met in person about five days later. That's on
13 November 7, 2018.

14 During this meeting, the defendant agreed to deliver the
15 votes regarding 435 Elm in exchange for \$20,000 in campaign
16 contributions. The evidence will show that this meeting
17 occurred in two parts.

18 The first part occurred in a downtown restaurant with the
19 defendant, Chin, and his investor, Rob, that I just told you
20 about.

21 The second part of the meeting happened in Rob's private
22 condo near the restaurant after Chin had left.

23 The evidence will show that, based on the preceding call,
24 the defendant went to that meeting knowing what the investors
25 wanted. They wanted a yes vote on 435 Elm in exchange for

1 contributions.

2 And during the lunch meeting, they discussed the type of
3 development agreement Chin was looking for from the city for
4 435 Elm, including that he wanted the property sold to him for
5 a dollar.

6 After indicating that he would shepherd the votes, the
7 defendant showed Rob, the investor, his political information
8 in the context of Rob providing financial support.

9 The defendant told Rob, "You like making good bets and
10 good investments," and he proceeded to show Rob why the
11 defendant was a good investment.

12 He showed them a chart which he claimed demonstrated that
13 he would be the next mayor. And he told Rob that every
14 successful developer and business leader in Cincinnati had
15 placed their bets with him.

16 Rob told the defendant they wanted to ensure that 435 Elm
17 was veto proof. In response, the defendant assured him that
18 he could move more votes than any single other person,
19 including the mayor.

20 After lunch, when Chin left, that left the defendant
21 alone with Rob, and they walked back to Rob's condo in
22 downtown Cincinnati, and they had a private conversation about
23 435 Elm.

24 Rob explained that Chin's issues with the mayor were a
25 concern for him, and told the defendant that he wanted enough

1 city council support for 435 Elm to guarantee that the
2 development agreement could not be vetoed by the mayor. And
3 then he offered the defendant \$20,000 to get that deal.

4 The defendant did not turn down Rob's offer. The
5 defendant did not decline it. Rather, he accepted it, saying,
6 "I can deliver the votes."

7 The discussion then transitioned to the form of the
8 contributions. Rob asked the defendant how he wanted to
9 receive the money. And the defendant suggested 18 LLC checks,
10 each for \$1,100, before December 1st.

11 He also mentioned that he had a PAC that no one was
12 snooping around in, and any LLC or individual could give up to
13 \$5,000, which was the limit.

14 After Rob voiced concern about the contributions in his
15 name, and LLC checks being connected to him, they agreed that
16 the initial contributions, the initial \$10,000 out of the
17 \$20,000, would be paid in money orders attributed to the names
18 of other people.

19 At the end of the meeting, directly after they discussed
20 getting the money to the defendant by the last week of
21 November, they reconfirmed the deal, and the defendant said he
22 was going to make it happen.

23 However, after the meeting, the defendant called Rob, and
24 told him that there was a problem with the money orders. But
25 the defendant explained there was another option, and the

1 defendant told Rob about the PAC again.

2 Specifically, the defendant told Rob there is a PAC
3 that's not connected to his name in filings or paperwork, and
4 the defendant said that no one knows about it.

5 The defendant said if the money went to the PAC, nothing
6 about it would be connected to him, and no one would poke
7 around for the names of the investors.

8 The defendant then said he wanted to make sure he was
9 doing this right, and also wanted to protect the investors.

10 The defendant reconfirmed the information about the PAC
11 several times. For example, on another occasion, he told Rob
12 and Rob's business partner, you will learn is an individual
13 named Brian Bennett, his name is not connected to the PAC in
14 any way. And he said, and I quote, "No one will ever know
15 this."

16 But he made clear that the contributions to the PAC would
17 benefit him a hundred percent. That's what he said.

18 The evidence will show that after the defendant's
19 agreement to deliver the votes in exchange for the campaign
20 contributions, the defendant accepted money on multiple
21 occasions. The evidence will show that when he did, he
22 reconfirmed the agreement with the investors.

23 For example, in late November 2018, when the defendant
24 received the first installment of the two \$5,000 checks, the
25 defendant told Rob and Rob's business partner, Brian Bennett,

1 "Look, I'm ready to shepherd the votes as soon as it gets to
2 city council."

3 And he explained that he was basically in waiting mode
4 until the project got to council, but to let him know if the
5 legal department at the city was stalling.

6 Likewise, on December 17, 2018, when the defendant picked
7 up four checks, two replacement checks from the earlier
8 meeting and two new checks, for a total of \$20,000, the
9 defendant told Rob and Brian that the contributions were huge.
10 They were a big help. And then he, again, promised to deliver
11 the votes.

12 He said, "Don't let these be my famous last words, but I
13 can always get a vote to my left or a vote to my right."

14 The defendant's actions in this case give meaning to the
15 words he spoke. The evidence will show that.

16 For example, as you hear the evidence in this case,
17 consider the timeline of these events.

18 For example, the evidence will show that the defendant
19 met Rob for lunch on November 7th. How quickly did he agree
20 to the deal?

21 The evidence will show by December 17th, a little less
22 than a month and a half later, when he had received \$20,000.
23 He had only met Rob three times, including on that particular
24 day.

25 The defendant treats Rob like an acquaintance he had met

1 three times, or a wealthy businessman who he had just received
2 \$20,000 from.

3 Now, it's also important to evaluate evidence of the
4 defendant's actions about the 435 Elm project after he
5 received the campaign contributions in this case.

6 The evidence will show that the defendant's commitment to
7 the deal he made through his subsequent actions, which
8 included, one, trying to move the project; and, two, reporting
9 his actions back to the investors of the project.

10 For example, you'll hear that the defendant took the
11 following actions after the campaign contributions were
12 received. First, he spoke to the mayor about 435 Elm, and
13 reported the results of his conversation with the mayor back
14 to Rob.

15 He contacted the head of the city's economic development
16 department, Phil Denning, about 435 Elm, and he reported the
17 results of that conversation back to Rob.

18 Now, let me pause here. The actual substance of these
19 conversations may not be as important as the fact that they
20 occurred. The fact that the defendant made the effort to go
21 out and have these conversations about 435 Elm for the
22 investors, it's evidence you'll want to make sure you consider
23 and that you hear during trial.

24 Now let's talk more about the additional evidence you'll
25 hear about the defendant's actions.

1 When Chin, Rob, and Brian decided that having the city
2 sell 435 Elm to the port, which I'll get to in a minute, was
3 in their best interest, the defendant advocated for that at
4 city council. And when the sale of 435 Elm to the port
5 reached council, council unanimously approved the sale for one
6 dollar.

7 For his part, the defendant didn't abstain from the vote.
8 He didn't tell anyone about the \$20,000 he had received in
9 campaign contributions. Rather, the evidence will show that
10 he voted for the sale.

11 In fact, the day before the vote, the evidence will show
12 the defendant actually called Rob to make sure that the sale
13 was what he wanted.

14 Now, let me pause for a moment to give you context about
15 the port. The port is a quasi-governmental agency, and
16 although it sounds like something connected to the Ohio River,
17 it's not. It's actually created under Ohio law, and it's a
18 community and economic development agency that essentially
19 mends broken real estate.

20 It's governed by a board and a president, not the mayor.
21 And one of the advantages of the port is that it can clear a
22 property it owns, in this case 435 Elm, of back taxes that the
23 owner would normally have to pay.

24 So having city council vote to sell the property to the
25 port could erase any back taxes, and may be advantageous for a

1 property, and it would keep the project moving forward without
2 the mayor's interference.

3 The evidence will show that after the 435 Elm was sold to
4 the port, the defendant continued to demonstrate his
5 commitment to the deal.

6 The evidence will show that in August, he began
7 pressuring the president of the port, someone named Laura
8 Brunner, for action on 435 Elm. And you'll hear her testimony
9 during trial.

10 This pressure continued through November and December of
11 2019, and he reported his efforts to pressure Ms. Brunner back
12 to the investors. I'll come back to that pressure in a
13 moment.

14 But first I want to tell you about the second phase of
15 this agreement. The evidence will show that after he
16 delivered the votes in June of 2019, the defendant continued
17 to work with investors on a second phase of 435 Elm, during
18 which time the defendant received another \$20,000, for a total
19 of \$40,000 in campaign contributions.

20 Specifically, the second phase involved a sports book. A
21 sports book just refers to a legal sports betting venue where
22 people can place bets on sports. Rob and Brian told the
23 defendant they wanted to operate a sports book out of 435 Elm

24 And they told him they were interested in establishing an
25 exclusive sports book, meaning they wanted to limit their

1 competition by increasing the barriers of entry for
2 competitors.

3 They explained to the defendant that while they were
4 pursuing legislative assistance at the state level, they were
5 also interested at what could be done at the city level to
6 make their sports book plan successful.

7 This culminated in a meeting where the defendant met with
8 Rob, Brian, and their boss, Vinny, on September 24th, 2019, in
9 a hotel room in Columbus.

10 During that meeting, the defendant accepted \$10,000 more
11 in contributions from Rob and Brian's boss, Vinny.

12 The evidence will show that the defendant went into the
13 meeting knowing that he would meet their boss, and the
14 evidence will show what he knew about their boss before the
15 meeting, including whether he had questionable business
16 practices in the past.

17 When Vinny entered the room of that meeting, the
18 defendant said, "We've got to make sure the sports book
19 betting thing goes through and that Cincinnati operation
20 happens."

21 During the meeting, they discussed how Vinny, Rob, and
22 Brian could have an exclusive sports betting venue in
23 Cincinnati, and how they could keep out the competition.

24 The defendant talked about zoning ordinances, and zoning,
25 and how they could use zoning code as a tool to create a

1 controlled environment, meaning without competition.

2 Vinny told him he didn't care what it cost him, that they
3 would take care of the defendant.

4 And during the discussion, Vinny pulled the defendant
5 aside and give him two \$5,000 checks for the PAC, and promised
6 two more in the future.

7 The defendant didn't turn down the PAC checks, he chose
8 to accept them. And he said, "I'm very appreciative of
9 these."

10 The conversation then continued to how they could advance
11 the sports betting facility through the city's controlling of
12 zoning or bonding.

13 Now, you'll learn during this trial, besides the sports
14 book, the September 24th, 2019 meeting is important because
15 the defendant also discussed some allegations in a civil
16 lawsuit that had been made against Chin. And while the
17 allegations themselves are not important, the defendant's
18 actions relating to his allegations are.

19 The evidence will show that the defendant's conduct
20 showed a special loyalty to the investors who had paid him.

21 During the conversation, the defendant told Rob and Brian
22 and Vinny that he a hundred percent had their backs.

23 The defendant went on to explain that while Chin first
24 introduced them, he was really closer to Rob and Brian, even
25 though the evidence will show he had met them less than a year

1 before.

2 He urged them to take over the 435 Elm project and get
3 rid of Chin. In fact, he offered to set them up with a
4 replacement for him.

5 Following this meeting in September of 2019, the evidence
6 will show the defendant reconfirmed his commitment to the
7 investors through persistent contact and efforts related to
8 435 Elm.

9 And then on October 28th, he began reaching out -- this
10 is the defendant, began reaching out to Vinny directly and
11 reporting the work that he had done on 435 Elm.

12 In these conversations, which you'll hear during trial,
13 the evidence will show the defendant began using the word "we"
14 when he discussed the 435 Elm project, like he was part of the
15 team.

16 And he told Vinny that he wanted to be, quote, a baller
17 like Vinny. They also discussed more contributions during
18 these conversations. When Vinny told the defendant that he
19 was bringing him two more nickels, the defendant told Vinny
20 that his nickels were greatly appreciated.

21 And when Rob delivered the nickels, the two checks, the
22 evidence will show that the defendant reconfirmed his
23 commitment later that evening to Rob about the project.

24 After receiving those two other nickels, the evidence
25 will show that the defendant continued to apply pressure to

1 the public official at the Port Authority with respect to
2 435 Elm. This is the pressure regarding Ms. Brunner that I
3 talked about earlier.

4 The defendant also continued to contact Vinny and explain
5 what he was doing. For example, two weeks after receiving the
6 checks, the defendant told Vinny that he knew about the
7 problem with the port, and he thought he had the problem
8 solved.

9 He told Vinny about a pretty intense conversation he had
10 with Ms. Brunner, and told her she needs to make it happen.

11 During another phone call, Vinny asked the defendant if
12 he was taking care of that situation with the port, and the
13 defendant said, excuse my language, he was all over it "like
14 stink on shit."

15 And he told Vinny that Ms. Brunner needed to understand
16 that she was a hundred percent accountable to the elected
17 officials, and that they controlled her budget.

18 He told Vinny that he was staying close to the situation,
19 and we're going to take care of it. We are going to take care
20 of it. These conversations occurred until the end of
21 December.

22 Now, what the defendant didn't know at the time was that
23 Rob, Brian, and Vinny were undercover FBI agents who were
24 recording their interactions with the defendant, which brings
25 me to the next part, how the United States will prove that the

1 defendant committed the crimes charged by the grand jury, and
2 that's through principally two types of evidence you're going
3 to hear. Those are recordings and witnesses.

4 So I want to start with the first category, and tell you
5 a little bit about the recordings. You're going to hear a lot
6 of recordings during this trial, and those recordings are
7 going to break down into three basic categories.

8 First, you're going to hear audio recordings of the
9 meetings, like when the defendant met Rob and Chin for lunch
10 on November 7th.

11 You're going to hear audio recordings of phone calls,
12 like when the defendant reported to Vinny how he was
13 pressuring Ms. Brunner.

14 And you're going to see some video recordings that
15 occurred at a condo, at Rob's condo, and in the hotel room in
16 Columbus.

17 This is the primary evidence in the case. You're going
18 to hear the defendant's own words, and you're going to hear
19 what the defendant said when he thought he was talking
20 confidentially, behind closed doors, in the condo, in the
21 hotel room.

22 As I noted a moment ago, there were undercover FBI agents
23 assisting the case agent, Nathan Holbrook, with his
24 investigation. This investigation technique is called an FBI
25 undercover operation.

1 And you'll hear that an undercover operation is just
2 another evidence collection technique. It's a legitimate
3 method used by law enforcement in a variety of contexts, where
4 undercover FBI agents adopt a persona to facilitate that
5 evidence collection.

6 It's an effective technique you'll hear in public
7 corruption investigations because it allows you to find out
8 what a politician is saying in person.

9 Recordings of meetings in person are very difficult,
10 you'll hear, to obtain without undercover agents wearing a
11 wire.

12 In this case, Rob, Brian, and Vinny were posing as
13 wealthy investors of the 435 Elm project, and they portrayed
14 these personas when they met with the defendant.

15 Now, in terms of collecting evidence, you'll hear that
16 the undercover agents recorded their interactions with the
17 defendant through the use of undercover phones or recording
18 devices.

19 And those recordings will allow you to hear unfiltered
20 the words of the defendant when he didn't know his words would
21 be heard in a courtroom by a jury.

22 You'll be able to assess his words and actions in their
23 full context to reach a verdict in this case.

24 Now, I'm not going to play these recordings during my
25 opening statement. That's because I want to play those

1 recordings with the witness on the stand so you can have the
2 full context of them.

3 You'll hear, though, during trial, with the benefit of
4 witness testimony, a little caveat, though. While we're going
5 to play a lot of recordings for you, we're not going to play
6 every minute of a recording, and the reason being, sometimes
7 these interactions lasted for a few hours, and you'll hear
8 that they only yielded a few minutes of pertinent discussion.

9 You see, part of the job of an undercover FBI agent, in
10 collecting evidence, is to build a rapport with the defendant
11 so he would talk to them, so they made small talk.

12 So, for example, if the defendant was meeting Rob and
13 Brian at a restaurant, the entire interaction was recorded,
14 from ordering food, to talking about baseball or current
15 events, but only five to ten minutes pertained to the 435 Elm
16 project.

17 Now, in addition to recordings, you'll also hear from
18 witnesses. You're going to hear from government officials who
19 have worked at city council and who have worked for the
20 Port Authority.

21 You're going to hear from Kevin Flynn and Laura Brunner.
22 They'll tell you about city council and the Port Authority,
23 how both work and operate. And they'll tell you about
24 development projects in general so you have a basic
25 understanding of how they work and the general approval

1 process so you can put the rest of the evidence in context.

2 And Laura Brunner will also tell you about the specific
3 interaction she had with the defendant about 435 Elm.

4 Now you're also going to hear from law enforcement
5 witnesses. You're going to hear from the FBI undercover
6 agents, and you're going to hear from the case agent, and they
7 will tell you about the evidence that they collected in this
8 case.

9 You're also going to hear from sources like Chin. Chin
10 was working as a source for the FBI. And you'll hear that he
11 was providing information to the FBI, and at the direction of
12 the FBI, he was recording his interactions.

13 What that means is that he was already working for the
14 FBI when he received that call in September of 2018. He told
15 the FBI about it, and then they gave him further instructions
16 about recording later calls.

17 During the time that he was working with FBI, he was paid
18 for the work that he was doing and the hours that he put in,
19 but 435 was his real project. The FBI undercover agents used
20 his project as cover so they could pose as his investors.

21 But I want to be clear, the FBI never invested money in
22 435 Elm, or had a financial interest in that property at any
23 time.

24 Chin's role here was to introduce the undercover FBI
25 agents so they could have conversations with the defendant.

1 And once he did that, it was the undercover agents who
2 primarily interacted with the defendant.

3 For example, Chin was not present when the undercover
4 FBI agents gave money to the defendant, or when he reconfirmed
5 the deals with them.

6 And you'll also hear from civilian witnesses who had
7 interactions with the defendant either about the \$40,000,
8 about 435 Elm, or his relationship with the investors.

9 And all of these witnesses have different pieces of the
10 story. You can think of it like pieces of a puzzle and, at
11 the end of this case, when all of those pieces are in place,
12 you'll have a clear and powerful picture of the defendant's
13 conduct in this case from which you can make a decision.

14 Now we will use this evidence to prove beyond a
15 reasonable doubt the charges in the indictment. And as the
16 judge told you, a federal grand jury has indicted the
17 defendant on six counts; the two counts of honest services
18 fraud, the two counts of attempted extortion under color of
19 right, and the two counts of bribery concerning federal funds.

20 These are public corruption charges, and the judge will
21 give you very detailed instructions at the end of this case
22 about the elements of those charges. And you should pay close
23 attention to those instructions and follow those instructions.

24 But they boil down to a basic question here, and that's
25 did the defendant accept campaign contributions knowing that

1 they were exchanged for specific official action regarding the
2 435 Elm project.

3 As you hear the evidence in this case, there are four
4 important concepts to keep in mind, and this will help you
5 contextualize the evidence as you hear it during trial.

6 The bribery agreement does not have to be in express
7 terms. So what that means is that the bribery -- that bribery
8 does not require the defendant to use special words. It can
9 be an understanding that is clear, otherwise, someone could
10 get around the law by using winks and nods.

11 The flip side of that concept is that someone can't avoid
12 the law by simply saying a few magic words like "this is not
13 bribery," while their subsequent words and action show a
14 bribery agreement.

15 In terms of a preview of the evidence, I wanted to tell
16 you that, because that means you're not going to hear a tape
17 where Rob says will you take this bribe to perform this
18 specific official action, and the defendant responds, why yes,
19 I will take that bribe.

20 It will be more subtle, and you'll have to use the
21 judge's instructions, with your common sense, to evaluate the
22 defendant's words and actions.

23 Second, the politician doesn't have to ultimately perform
24 the official act. So along those lines, it doesn't matter if
25 the defendant had the power to effectuate the official action.

1 It only matters what the defendant promised to do.

2 Third, it doesn't matter if the defendant would have made
3 the same decision anyway. People rarely act for a single
4 purpose, and it makes no difference that the defendant may
5 have had another separate, even lawful, reason for his action
6 if one of those reasons was because of the \$40,000 in campaign
7 contributions. That is sufficient.

8 Along those lines, we're not going to present evidence to
9 you about whether 435 Elm was a good project for the city or
10 was a bad project for the city, because the merits of the
11 project will not matter.

12 What matters is is one of those reasons, what matters is
13 whether the defendant's actions about 435 was because he
14 received the contributions, and those formed one of the
15 reasons he made his decision.

16 Finally, a bribe can be any kind of money or property
17 that benefits a politician. So it can be cash in the pocket,
18 it can be a check in a bank account, or it can be campaign
19 contributions, like this case.

20 I'm almost done here, but I want to spend one or two
21 minutes to make clear what this case is not about, to ensure
22 we're all on the same page.

23 So I've talked a lot about what this case is about. Let
24 me tell you what it's not about.

25 It's not about the defendant's performance as a city

1 council member. It's not about party affiliation. This case
2 is not about your personal feelings, or anyone's personal
3 feelings about the policies or the politics of the defendant.
4 It's not about whether the defendant is a good guy or a bad
5 guy. It's not about whether you have sympathy for the
6 defendant or his family.

7 This is a criminal trial, like any other, and the
8 question is, did the defendant commit the crimes that he is
9 charged with.

10 I want to be very clear that this case also is not about
11 the propriety of campaign contributions, limits, types, or
12 specific rules about contributions.

13 You will hear recordings involving discussions about
14 contributions because that was the form of the bribe payment
15 in this case, and the government has to prove that those
16 payments benefitted the defendant in some way.

17 And on those recordings, the defendant explains how they
18 benefitted him. But like them or not, campaign contributions
19 are a core part of our political system, and there's nothing
20 wrong with a politician soliciting a campaign contribution,
21 or asking someone to fundraise for them.

22 Similarly, there's nothing wrong with a public official
23 meeting with constituents about an issue. We want that as a
24 society.

25 But what a public official can't do is agree to exchange

1 campaign contributions for his specific official action on a
2 project. That's illegal. That's bribery. And that is what
3 the evidence will show that the defendant did.

4 At the end of this trial, when all of the evidence is in,
5 we will have another opportunity to come before you and speak
6 to you again about what the evidence shows when compared to
7 the judge's instructions.

8 Between now and then, I want to ask you to do three
9 things. First, pay very careful attention to the evidence as
10 it comes in.

11 Second, follow whatever instructions the Court gives you.

12 And third, use your common sense and your good judgment,
13 the same things you use in your everyday lives as Ohioans.

14 And if you do these three things, at the end of the case,
15 when all of the evidence is in, I submit that each and every
16 one of you will conclude beyond a reasonable doubt the
17 defendant broke the law, and because of what he did, he's
18 guilty as charged.

19 Thank you. We appreciate your service.

20 THE COURT: Thank you, Ms. Glatfelter.

21 Well, we've been going for a bit, ladies and gentlemen of
22 the jury, so I think we're going to take a brief break to
23 allow everyone to stretch your legs before we hear from
24 Mr. Rittgers on behalf of Mr. Sittenfeld, so let's take a
25 brief recess.

1 As I've said multiple times, and I will say multiple
2 times throughout this trial, please, during this break, do not
3 begin to discuss the case with your fellow jurors. Do not do
4 any research with any media. Do not do any research with any
5 electronic devices.

6 Please do not begin to form any opinions. You've not
7 heard any evidence. You've heard one opening, and there's a
8 lot of evidence to be heard down the road. You'll have plenty
9 of chances to discuss and deliberate after all the evidence is
10 in, so until that time, please do not form any opinions.

11 (Jury out at 10:56 a.m.)

12 THE COURT: Mr. Rittgers, can you remind me how long
13 your opening is going to be?

14 MR. C. MATTHEW RITTGERS: Your Honor, I believe it
15 will be between an hour and 20 or an hour and 30 minutes.

16 THE COURT: Okay. It's an unfortunate time. It's
17 11:00 right now. Obviously, I don't want to break you in the
18 middle of your opening.

19 Do you think we should just run the jury a little late
20 and take a lunch break after your opening?

21 MR. C. MATTHEW RITTGERS: That would be my
22 preference, Your Honor.

23 MR. SINGER: Sounds good.

24 THE COURT: So let's try to keep this break short. I
25 know you need to get set up for your presentation.

1 Is Mr. Greiner in the courtroom?

2 MR. GREINER: Yes, Your Honor.

3 THE COURT: Mr. Greiner, you wanted to be heard on
4 your motion?

5 MR. GREINER: Yes, Your Honor.

6 THE COURT: Mr. Rittgers, please feel free to do
7 whatever you need to do to get set up while this is going on.
8 Mr. Greiner?

9 MR. GREINER: Your Honor, I conferred with
10 Mr. Singer, and I think we might be basically in agreement.

11 THE COURT: Oh, okay.

12 MR. GREINER: We have no objection to redacting the
13 names and home addresses of the jurors on juror
14 questionnaires.

15 THE COURT: My concern beyond that is that there are
16 certain -- you're asking for the entire venire of just the
17 petit jurors?

18 MR. GREINER: Our primary concern is the 16 in the
19 box.

20 THE COURT: Okay. So that's one thing I wondered. I
21 think what I would want to do is a couple things.

22 First, I'd want to give them the opportunity to remove
23 any information. As you know, during the public process,
24 there are times when jurors approach and discuss things at
25 sidebar, such as medical conditions or things like that.

1 There are questions on the questionnaire that ask for
2 information that I think a juror could say I'd rather give
3 that at sidebar.

4 And so my concern is that they should have an opportunity
5 to redact that information, especially in light of the fact
6 that the questionnaire says at the very top it will all be
7 confidential, they may have given information about medical
8 conditions of themselves, or family members, or things of that
9 nature that I think it's only fair they have an opportunity to
10 redact.

11 MR. GREINER: Fair enough.

12 THE COURT: So that's concern number one. And then
13 concern number two is that even if we remove the name and
14 address, I think one of the questions may be occupation on the
15 supplemental questionnaire and, you know, if somebody works at
16 a place they've identified, like -- and I'll just give a
17 made-up example. I work at Fran's Hair Salon, or something
18 like that. And there's only six people there, or seven
19 people, and everybody knows who is missing, I'm just afraid it
20 may become public who the members of the jury are.

21 And my concern about that is that they may -- people may
22 not be able to help themselves and start approaching these
23 jurors and trying to discuss the case with them, given the
24 media attention that's out there.

25 So even if the jurors are not reading the media, and I

1 don't believe they will, in light of the admonishment I've
2 given them, I'm just afraid it may cause inadvertent, almost
3 jury tampering; not intentional, but inadvertent, if the
4 identities of the jurors become public, and that's the concern
5 I have.

6 MR. GREINER: I understand your concern, Your Honor.
7 Just a couple of things. The juror service is not subject to
8 confidentiality.

9 THE COURT: I understand that.

10 MR. GREINER: It just isn't. So we were willing to
11 make some accommodations in terms of personally identifiable
12 information, but not because -- that's an accommodation.

13 In terms of jury tampering, Your Honor, you admonished
14 the jury, and you'll admonish them again, that if they are
15 approached by anyone to immediately, you know, report that to
16 the Court.

17 We believe that that is a reasonable means to prevent and
18 address your concerns, and that to withhold the questionnaires
19 in their entirety, or even to redact beyond medical
20 information, is no problem.

21 I mean, I think the public is interested in the
22 demographics of the jury and, you know, who is going to decide
23 this case, what do they look like, you know, what are they all
24 about. And, you know, I think occupation is part of that. Is
25 this primarily blue collar, is this primarily white collar.

1 So I don't think the occupation is, you know, perhaps --

2 THE COURT: Sure. If it says auto mechanic, for
3 instance, that's fine --

4 MR. GREINER: Right.

5 THE COURT: -- because that's not identifiable.

6 MR. GREINER: Or if they work at Procter & Gamble. I
7 mean, that doesn't really identify them.

8 THE COURT: Sure.

9 MR. GREINER: So I hear what you're saying on that.
10 But I will start with the premise that this is not a matter of
11 confidentiality that they are serving in this capacity, and we
12 should work from that presumption, not from the presumption
13 that we shouldn't upset their -- the confidentiality of their
14 jury service, because it's not confidential, for one.

15 THE COURT: And I'm not -- well, I do note there's
16 some law around this. There's a little something for
17 everybody in the law.

18 I don't necessarily disagree with what you're saying. I
19 guess I'm trying to figure out a way to give the information
20 to you or your client in a way that doesn't upset the
21 proceedings of the trial.

22 MR. GREINER: We don't want to do that.

23 THE COURT: And I appreciate that. I do. You know,
24 I guess it sounds like you think it's more -- it's necessary
25 to have it now rather than, as opposed to once the jury

1 verdict is announced because, obviously, once the verdict is
2 announced, these concerns are very, very different from what
3 they are right now.

4 MR. GREINER: Right, but the public interest moves on
5 as well.

6 THE COURT: Sure. Do you want to be heard,
7 Mr. Singer?

8 MR. SINGER: Your Honor, as you noticed in our
9 filing, we didn't take a position as to the steps the Court
10 should take as far as this goes.

11 We really raised issues relating to the law. And I think
12 the Court has some discretion, obviously, in this area to
13 protect the interests of the jurors, while recognizing the
14 right to the public for this information. So we refer to the
15 good judgment of the Court.

16 THE COURT: Okay, Mr. Singer.

17 Mr. Greiner, I've heard what you had to say. I want to
18 make sure I understand.

19 You would be satisfied with the petit jury that is
20 seated, those questionnaires; is that right?

21 MR. GREINER: Yes, Your Honor.

22 THE COURT: I will look at those questionnaires this
23 evening and see what, if anything, I can do with that, and
24 I'll try to give -- if I'm not going to give you the
25 questionnaires, I'll try and give you a written decision so

1 that you can do whatever it is you're going to do with that
2 written decision.

3 MR. GREINER: I appreciate it. I'm sorry I wasn't
4 here yesterday. I was in Columbus in front of Judge Morrison.
5 She said to say hello.

6 THE COURT: Very good. All right. Thank you,
7 Mr. Greiner. I appreciate it.

8 Let's take a very brief break ourselves.

9 Mr. Rittgers, how much time are you going to need?

10 MR. C. MATTHEW RITTGERS: Just a few minutes, three
11 to five minutes.

12 THE COURT: Okay. Let's take a brief break.

13 (Brief recess.)

14 THE COURT: Are we ready to proceed, Mr. Rittgers?

15 MR. C. MATTHEW RITTGERS: Yes, Your Honor.

16 THE COURT: Very good. Anything anybody want to put
17 on the record before we proceed?

18 MR. SINGER: No, Your Honor.

19 THE COURT: I just will remind you, we are getting
20 close to the witness presentation part, so I will remind both
21 parties that we are doing separation of witnesses, so... all
22 right. I think we're ready to bring in the jury.

23 COURTROOM DEPUTY: They should be on their way,
24 Judge.

25 THE COURT: Mr. Rittgers, before we begin, I'm going

1 to inquire whether it's going to present a hardship to any
2 jurors to push lunch until 1:00, just in case somebody has
3 blood sugar issues, or anything like that.

4 MR. C. MATTHEW RITTGERS: Thank you, Your Honor.

5 THE COURT: You said it would take about an hour and
6 a half, so it would be about 1:00?

7 MR. C. MATTHEW RITTGERS: That's my guess, Your
8 Honor.

9 THE COURT: Thank you.

10 (Jury in at 11:31 p.m.)

11 THE COURT: Ladies and gentlemen, I apologize. That
12 took a little longer than anticipated. We ran into the most
13 terrifying phrase in the English language, "technical
14 difficulties." I think we have our courtroom technology
15 working again.

16 Mr. Rittgers advises that his presentation will take
17 about an hour and a half, and so I'm just wondering, is there
18 anyone for whom taking a lunch break at 1:00, rather than at
19 noon, is going to present an issue, anyone on the jury? Can
20 we do that? We are good to go? All right.

21 So why don't we start, Mr. Rittgers. It's your turn to
22 make an opening.

23 MR. C. MATTHEW RITTGERS: Thank you, Your Honor.

24 Good morning. Everything in life requires context. And
25 we talked a little bit about it in voir dire. Partial truth

1 is no truth at all.

2 And so what I'd like to do for the next hour and a half
3 or so is put some things in context that you're going to hear
4 during this case.

5 The government has already said that they agree that this
6 case is not about campaign finance, not about campaign
7 contribution limits, not the form of the donation. And it's
8 not about that because there is nothing untoward about the
9 contributions in terms of the form, the amounts. So that is
10 true. That's not what the case is about.

11 But you're going to hear and see certain things that are
12 important for us to discuss, and the way in which that's
13 regulated under what's called Federal Election Commission law,
14 FEC law.

15 And I hope everyone can see this on your screen.

16 We're going to hear that a person who wants to
17 financially contribute to a candidate has three choices, and
18 it is not the candidate's choice to make, it's the person who
19 wants to contribute.

20 A lot of folks don't contribute, and that's completely
21 fine. But for folks who want to contribute, there are three
22 choices, and they're in front of you on your screens right
23 now.

24 A person can personally donate and give money to a PAC,
25 or to a candidate's campaign. Those are two separate things,

1 which we'll talk about in a minute.

2 A person can fundraise or bundle, and those terms are the
3 same thing. Literally, bundling would be going around and
4 getting ten checks, as an example, from ten different people,
5 putting them together, and saying here are ten checks that I
6 fundraised for you. I bundled them together, and I got them
7 from these ten individuals, individual one through ten.
8 That's called bundling or fundraising.

9 The person who is doing the fundraising is not required
10 to personally donate him or herself. That's not required.
11 And the candidate cannot force them to personally donate
12 themselves.

13 The third option is, obviously, you can fundraise and
14 bundle, and also personally donate yourself.

15 FEC law says that a candidate on this type of PAC, the
16 PAC that Mr. Sittenfeld -- and I'll call him P.G. a lot during
17 this trial because of my comfort with him.

18 I'll give you a quick aside. I might say to Mr. Ndukwe,
19 he's referred to in tapes as Chin, or Chinedum, so I will
20 interchange calling people Mr. or Mrs. sometimes but,
21 hopefully, I will be very clear.

22 FEC law governing this type of PAC tells candidates that
23 they are not permitted to put their name on an FEC website for
24 the PAC.

25 And so P.G.'s PAC was called Progress and Growth PAC.

1 And Progress and Growth PAC was publicly available on fec.gov.
2 And every penny that went into the PAC, and every penny that
3 was written out of the PAC, was publicly available and
4 properly written down and recorded. The FEC would not let him
5 put his name in these filings, and that's the law.

6 So when the government, FBI agents, ask whether or not
7 their name will appear. One, that's your right. If you don't
8 want to donate to a candidate's campaign, and we'll hear in a
9 minute, that was P.G.'s preference, and we'll talk about why
10 in a minute, you have a right to say I want to fundraise or
11 bundle, I'd rather do it to your PAC.

12 And so when he tells them that his name is not associated
13 with his PAC, it is not in any FEC filings, the press is not
14 going to the Progress and Growth PAC and snooping around,
15 that's what you'll hear in these conversations. And I would
16 love to jump right to the tapes, but I want to give us some
17 quick context first.

18 A candidate is also permitted to personally accept
19 campaign donations hand to hand. The reason why I say that is
20 because we are going to see video where the government sets up
21 a video, and they personally hand Mr. Sittenfeld, P.G.,
22 checks, campaign donations.

23 The FEC says not only can a candidate personally accept a
24 campaign donation check, but a candidate can also personally
25 accept a PAC donation check, the Progress and Growth PAC, they

1 can personally accept that and put it in their pocket.

2 It happens all the time, at restaurants, at houses.
3 There are candidates that do fundraising at country clubs. We
4 don't have that here, but I just want everyone to be aware
5 that there's no dispute that personally accepting these
6 donations is not in any way wrong.

7 This is an example, and it's an actual screen shot of the
8 Progress and Growth PAC. And the reason why I chose this
9 screen shot is because there are four donations that are at
10 issue, and each one is \$5,000.

11 Four were given by FBI agents in 2018, on December 17th,
12 by the way, in 2018. And four more were given at various
13 times in 2019. This particular screen shot, we were able to
14 show four on the FEC website all together.

15 And you'll hear these particular donations if we hear
16 from -- and we might -- Mr. Sittenfeld. At the time, P.G. had
17 a PAC treasurer, and she's, I believe, a CPA, an accountant.

18 And it was routine, anytime that P.G. would receive a
19 PAC donation from an LLC check, they had checks in place. And
20 he said, "I want the team to make sure that the checks are
21 attributable to the proper individual."

22 These names, Jason Myers, Nathan Wright, William Cheske,
23 and Lisa Hunt were given to P.G.'s campaign team by the
24 undercover agents. They told him that those were the names
25 associated and attributable to each one of the checks, and so

1 that's what they put on the FEC filing.

2 Campaign donations are much more valuable to a candidate
3 than a PAC donation, this type of PAC. We've heard like dark
4 money PACs, and super PACs. That is not this type of PAC.
5 This type of PAC, and the way it's governed under FEC law, can
6 be used for a few things.

7 The majority of the expenditures for this type of PAC
8 were used for giving to non-profit organizations, other
9 candidates, and then P.G. could use it for lunch, or travel,
10 if he was going to speak with a potential constituent or
11 donor. And these are publicly available, what was spent,
12 every penny, on this PAC, on this public website.

13 The number one use was giving to other candidates.
14 Number two use was giving to non-profits and charities in the
15 areas. That's this type of PAC.

16 The reason that's important is because P.G. said
17 expressly, on November 7th, the first time he met Rob, who we
18 now know is an undercover agent, he said, hey, campaign
19 donations are obviously more valuable but, ultimately, 40 days
20 later, and we'll talk about why, they end up donating to his
21 PAC.

22 But he told them campaign donations were the most
23 valuable to him because he can use those to run and be a
24 successful candidate, mailers, TV, if he wanted to, his
25 campaign staff. He can't do that with this PAC, and he's not

1 accused of commingling any of these funds either.

2 435 Elm, we've heard it referenced. 435 Elm, if we walk
3 four blocks west of here, we would see it on Fourth and Elm.
4 And these five pictures on your screen were taken several
5 years ago of 435 Elm. But this is exactly how it looks -- not
6 exactly, but it looks like this today. It's still a vacant
7 building.

8 The reason 435 Elm is such an important piece of property
9 for the region as a whole, and the county and city, is because
10 of how close it is to our Convention Center.

11 And there have been studies that we, the City of
12 Cincinnati, the county, and the port works the entire region,
13 southwest Ohio, that our Convention Center is losing business
14 to other cities because we don't have the capacity of nice
15 hotel space around it.

16 And so Indianapolis, Columbus, Louisville, the studies
17 have shown that we are losing out on tax dollars in
18 conventions coming into Cincinnati. So this parcel is very,
19 very strategic for the region.

20 And the people in the city knew it, the leaders, the
21 administration. You might even hear from a guy by the name of
22 John Curp, who was a city solicitor and now he's an interim
23 city manager. This was on the city's radar since 2008, at a
24 minimum. It was on P.G.'s radar well before he met these
25 guys.

1 These are text messages between a guy by the name of Ryan
2 Goldschmidt and P.G. And if you look at the dates which have
3 been blown up, the first is November 28th of 2017, and the
4 second is July 6th of 2018.

5 The first meeting with one of these so-called investors
6 was on November 7th of '18, so we are talking four months
7 after this July 6th text.

8 Ryan Goldschmidt and his father claimed that they had a
9 tenancy right, that they had the right to occupy 435 Elm. And
10 435 Elm was embroiled in litigation for a very long time,
11 including as early as 2016.

12 So Ryan Goldschmidt and P.G. are texting. P.G. had
13 shared in a meeting -- this is a reference of P.G. sharing in
14 a meeting people that he and his father could speak with in
15 the city to try to help move this forward for the region so
16 that it doesn't just sit there, dilapidated, across from our
17 Convention Center, before he met any undercover agents, before
18 there's an accusation that there was any untoward conduct with
19 Mr. Ndukwe.

20 And the July 6th of 2018 text, we can see that
21 Mr. Goldschmidt, Ryan, said, "Hey, can you meet up with
22 Chinedum and myself to discuss the property at Fifth and Elm?"

23 P.G. says, "Happy to," and he throws out a date. This is
24 long before any accusation of misconduct.

25 And so P.G. was involved with the one family who claimed

1 that they had ground rights, and Mr. Ndukwe, who he thought
2 was his friend, before he was ever approached by anyone from
3 the federal government.

4 And the reason this was on city radar for so long, we're
5 going to hear from Philip Denning, Mr. Denning. And this is a
6 quote from him from June of 2019. But the reason it's
7 important is because these facts, the facts that the city was
8 struggling with this property, also went back many years.

9 This is the ultimate transfer of the property to the
10 port. It was a unanimous nine-oh vote in city council,
11 transfer to the port. And you will not hear that there was
12 any urging or pressuring from P.G. to any council member. It
13 was a no-brainer project, and that is why council voted
14 nine-oh to transfer this to the port.

15 The port has the ability to do things the city cannot
16 when you have an under-vitalized property that is in dire need
17 of vitalization, so they transferred to the Port Authority.

18 And we can hear Mr. Denning's actual speech on council
19 floor, and that's the word that you just saw, we're going to
20 hear them, I hope.

21 (Audio played)

22 MR. C. MATTHEW RITTGERS: So Mr. Denning, at the
23 time, he was the city economic development director. And the
24 development director spoke on council floor, this was in 2019,
25 but these numbers were fairly close for the prior several

1 years.

2 This was a problem property, with maintenance issues. It
3 was an eyesore right across from our Convention Center, and it
4 was draining the city to the tune of \$4 million over a decade,
5 so they wanted to revitalize it and get it off the books.

6 And ultimately, council passed an emergency ordinance,
7 which you'll see on your screen now, and I'll blow up the part
8 that discusses the reason this was transferred to the port in
9 June of 2019, which echoes some of the things we've already
10 heard, which is that this was costing the city \$400,000 a
11 year.

12 P.G. and many others had this on their radar, and as we
13 could see from those texts, was trying to help with this
14 project that to this day has not been completed and is still
15 in lawsuits and litigation.

16 We've heard a very short reference, I believe, to the
17 mayor and Mr. Ndukwe. And Mr. Cranley, who was the mayor from
18 2013 to 2021, I should say Mr. Ndukwe believed, because I
19 don't know. But Mr. Ndukwe definitely believed, and you'll
20 hear in the tapes, that Mr. Cranley had a vendetta against him
21 because Mr. Ndukwe had supported Mr. Cranley's opponent,
22 Yvette Simpson, in 2017 for mayor.

23 P.G. heard this from his friend, and took Mr. Ndukwe's
24 concerns very seriously. You'll hear this on the tape, that
25 the mayor, Mr. Cranley, during all times relevant in this case

1 had a vendetta against Mr. Ndukwe, and was hurting his ability
2 to get a project that was vital for a region in downtown off
3 the ground.

4 Back in 2012, Mr. Ndukwe was considering getting into
5 development. And he and P.G. had known each other for two
6 years at the time. P.G. introduced Mr. Ndukwe to the head of
7 the port back in 2012, when Mr. Ndukwe was considering
8 development. So their relationship and friendship went back a
9 very long time. They were very comfortable with each other.

10 Some of the quotes the prosecutor mentioned in opening,
11 you will have to hear because I don't want to misquote, but I
12 don't think that they were accurate in terms of the
13 friendship. You will hear P.G. call Mr. Ndukwe his friend
14 throughout these tapes.

15 This is after Ms. Brunner, the head of the Port
16 Authority, met Mr. Ndukwe. And this is P.G. responding to
17 Ms. Brunner, this was all 2012, talking about Mr. Ndukwe
18 becoming a great asset to the community.

19 P.G. and Chinedum were not just business acquaintances.
20 They also, I think, I don't know, I can't speak for Chinedum,
21 considered themselves friends. P.G. thought of him as a
22 friend. And I'm showing these just to show the friendship.

23 When Mr. Ndukwe had his child, he sent P.G. a picture
24 right after the birth. And the same with P.G., not just to
25 Mr. Ndukwe, but also to the undercover agents.

1 And I'm showing you these from Chinedum and his child,
2 and P.G. and his child, to show the friendship and the comfort
3 level that everybody, and that includes the FBI agents with
4 Mr. Sittenfeld ultimately, and the friendship that was
5 believed to be true.

6 This is a holiday card in 2018 written to FBI agents,
7 where P.G. tells them, "Looking forward to the year ahead.
8 Thanks for believing in Cincinnati's potential."

9 Before the operation ever started, the undercover sting
10 operation, Mr. Ndukwe had been someone who had donated to
11 P.G., had fundraised for him, and in -- this is in Jan- --
12 sorry.

13 Yes, the text that I want to refer to is January 10th of
14 2018, nine months, but the same year the government claims
15 that there -- and there was an unrecorded call in September of
16 2018, where Mr. Ndukwe says P.G. asks him if he wants to
17 fundraise \$10,000 for him, and that probably happened.

18 This text nine months earlier is between Mr. Ndukwe and
19 Mr. Sittenfeld. And Chinedum says, "Keep me posted on the
20 next fundraiser. I'd like to be on the host level."

21 And we will hear that fundraisers can happen, you know,
22 like a physical location, like I mentioned, like over dinner,
23 or at a country club, where people come in and the host
24 actually says they can set a price for being cohost, or being
25 supporters, or being friends.

1 And the host is a bundler. The host says, okay, I've got
2 20 of my business acquaintances, or friends, or business
3 partners, or family, and they can bundle the checks together,
4 not personally donate -- that would be choice number two --
5 and be on a host level fundraiser, at a location or not, just
6 to fundraise.

7 The government, I believe in their opening, indicated
8 that Mr. Ndukwe, the reason why he was working with the FBI is
9 because of a problem with the stalled project. The reason we
10 know that is not true, it is because in January of 2018, nine
11 months before this recorded phone call, the FBI contacted
12 Mr. Ndukwe, and they said that they were investigating him for
13 various crimes.

14 They said they were investigating him. He had been
15 suspected of aggravated identity theft, money laundering, and
16 structuring banking transactions.

17 So after he was contacted in January of 2018, he hired a
18 criminal defense lawyer and, shortly thereafter, he went in,
19 and he actually met with some of the federal prosecutors who
20 are before you today, and Agent Holbrook, and he confessed to
21 various crimes.

22 He confessed to making false statements on federal
23 documents to the structured banking transactions, forgery, or
24 aggravated identity theft, and making contributions in the
25 name of another. That's like straw donor donations.

1 And they sat down. They had several meetings after this
2 in 2018. And I say they sat down, Mr. Ndukwe, the
3 prosecutors, Agent Holbrook, and he went through people that
4 he believed he could record and catch for crimes.

5 He had known P.G. for eight years. P.G. was never --
6 there were targets. There were plenty of targets that he
7 pointed the finger at, and said -- and I'm not -- it probably
8 is true, but it was not P.G.

9 So how did P.G. become a target? Well, in that
10 September, Mr. Ndukwe had been working with the federal
11 government now for six months recording people, meeting with
12 the federal prosecutors and the agent. He will admit, Agent
13 Holbrook, P.G. does not become a target until October of 2018,
14 and there were plenty of other targets.

15 The claim is is that the unrecorded phone call in
16 September makes him a target for asking someone to fundraise
17 \$10,000.

18 And one of the reasons why P.G. might have asked his
19 friend to fundraise is because, one, he had asked nine months
20 earlier; two, he had fundraised and donated to him in previous
21 campaigns.

22 And I mean, there were campaigns where he actually
23 donated an amount that would have been permissible. P.G. lost
24 a gubernatorial campaign and refunded Mr. Ndukwe money back
25 after it was too much after campaigning. These guys had known

1 each other for eight years.

2 When Mr. Ndukwe began working with the FBI between 2018
3 and 2020, they paid him cash payments to the tune of \$27,000
4 between 2018 and 2019. And there is nothing in writing as to
5 why they're paying him these cash payments. There's nothing
6 in writing as to whether or not he is entitled to more cash
7 payments.

8 And just on June 18th of this year, four days ago, they
9 did an interview -- first cash payment was in 2018, and they
10 said why didn't you pay federal taxes? He said, I thought I
11 couldn't tell anyone.

12 And he -- this is a man who worked with these FBI agents
13 on a monthly basis for years, and asked them questions,
14 because what they do when someone cooperates is they then
15 control people, and they create each -- who these actors are
16 going to be.

17 And when I say "actors," I'm talking about Rob and Brian,
18 the undercover FBI agents. They create their persona.
19 Mr. Ndukwe didn't make that up. He was told what to say by
20 Agent Holbrook and by the undercover agents.

21 The judge read the accusations at the beginning of this,
22 the scheme that Mr. Sittenfeld -- this is the accusation, his
23 scheme in soliciting donations, and that was in the
24 preliminary instruction.

25 I want to talk about what we know the actual plan

1 personas were in this fake scheme. Rob and Brian, as the
2 prosecutor mentioned, were investors in a problem property
3 that no other developer at the time was interested in in
4 Cincinnati.

5 Mr. Ndukwe purchased air rights in 2017 for this property
6 from U.S. Bank because the property was in foreclosure, and
7 U.S. Bank maintained that they had the right to the air. That
8 was their claim.

9 And so the reason, I believe, the ground was transferred
10 to the city was because of all the back taxes. That's how the
11 city obtained the ground rights. So everybody knew that a
12 deal, that a development agreement at 435 Elm would go to
13 Mr. Ndukwe. He had the air rights. And he had them in 2017.

14 And that means if you want to build anything into the
15 air, he should be involved. He can sell them, or he can be
16 involved in the development.

17 The plan was Rob and Brian are there to support this
18 development, that they were the money. Mr. Ndukwe had three
19 projects in front of the city at this time, three. This was
20 one of them. The other one was a low-income housing project
21 and a hotel deal up in Mt. Auburn.

22 No accusation, none, that there's anything untoward,
23 unethical, or bribery in the two projects that he had before
24 council, which included with P.G. and the rest of council
25 members. No accusation of anything wrong in that at all,

1 those two. But the no-brainer project, which is 435 Elm, that
2 Rob and Brian got involved in, that's the only claim of a
3 problem.

4 So how do we know that they said, hey, we're the
5 out-of-town money. We've got this. We're going to be the
6 gasoline that makes the engine go?

7 Well, the very first call, Mr. Ndukwe -- and this is,
8 again, Mr. Ndukwe is doing what Agent Holbrook is telling him
9 to do.

10 So the plan is Rob and Brian are going to be the capital
11 sources, the investors, behind 435 Elm. And their persona as
12 investors, and being ready and willing to develop 435 Elm,
13 that was not just to P.G., that was to everybody who they had
14 contact with.

15 November 7th, they tell him that this is going to be a
16 \$75 million deal, they tell P.G. Rob, the undercover agent,
17 and Chinedum tell P.G. they got a \$75 million deal they're
18 getting together.

19 January 9th, "It's Chin's deal. We're the money," which
20 we know they really were not, obviously.

21 So now that we have a little bit of background about
22 435 Elm, I want to start going into the transcripts, and
23 listen to audio and watch video.

24 The first -- I don't remember if it was mentioned, but in
25 the first phone call, Mr. Ndukwe says that things were heating

1 up at 435 Elm. This is the first recorded call.

2 There are three recorded calls that happened before this
3 November 7th lunch at Nada, and P.G. says, "Good. Yeah." I
4 mean, everyone in the city that was aware of 435 Elm wanted
5 this thing to be developed. And that's in there because I
6 thought they were going to use that in their opening.

7 October 30th, this gives us context about Chin's
8 relationship with Cranley. This is a recorded call between
9 P.G. and Chin, where Mr. Ndukwe says, "Here's the deal.
10 Here's the deal. It's like I don't know how much you know
11 about Cranley, he's just trying to fuck me left and right
12 because I supported Yvette Simpson," which might be true.

13 P.G. says, "I know a pretty good amount about it."

14 They continue to talk about people who are pressuring
15 Mr. Ndukwe to support them, and P.G. says, "Yeah, that's weird
16 and questionable legality." He thinks he's talking to an old
17 friend and doesn't even know he's on a recording.

18 And in this same call is the context of the "love you but
19 can't" quote that we did hear in the government's opening. It
20 is in the context of P.G. being able to help his friend if he
21 actually is successful, and in order to be successful, he has
22 to raise money in order to then successfully run to become the
23 next mayor.

24 And so this is the quote, and we're going hear it all in
25 a minute, and it's -- this is continued from the previous

1 slide. It's right after Mr. Ndukwe talking about
2 Mayor Cranley hurting him.

3 And it's also after Mr. Ndukwe -- sorry, P.G. tells Chin
4 that in order to be a successful candidate, he's got to raise
5 money.

6 Here's the call.

7 (Audio played.)

8 MR. C. MATTHEW RITTGERS: So that's the entirety of
9 the call, and there's a lot of discussion about before next
10 Tuesday and the LLC law change. If you notice, the date of
11 this call is October 30th.

12 There was a call four days before it on October 26th that
13 we have that's recorded, and that is when Rob and Brian or
14 Agent Holbrook tell Mr. Ndukwe to tell P.G. that they want to
15 get this in through LLCs before the law changed, which is
16 their right, and we're going to listen to that call, October
17 26th, in one minute. But they tell him. The first recorded
18 call is October 26th, four days before this, and they say
19 we've got lots of LLCs. We want to get this in before the law
20 changes. And we're going to hear that in a minute. So this
21 conversation we've already heard referenced is out of order.

22 This is a phone call on November 2nd of 2018. It's the
23 third recorded phone call before the lunch on November 7th.
24 And, again, Chin and P.G. have known each other for eight
25 years.

1 And this is not Chin's doing, this is the FBI telling him
2 to say something that sounds untoward. There's a script, and
3 it's planned.

4 And so when Mr. Ndukwe says something that sounds
5 improper, "I don't know if it's next year, two years, three
6 years, that it's going to be a yes vote, you know, without a
7 doubt. I've shared that with them, that, hey, I've known P.G.
8 for years, all this stuff, but they're, like, all right.
9 Well, get his attention."

10 And P.G. hears that, and P.G. says, "Nothing can be
11 illegal, like illegally nothing can be a quid pro quo. I know
12 that's not what you're saying either." He's known him for
13 eight years.

14 And Mr. Ndukwe agrees. Mr. Sittenfeld and Mr. Ndukwe
15 agree on this phone call on November 2nd. There's a
16 suggestion made. He says no. He says, "Okay. No. I hear
17 you. I hear you." There's an actual express agreement on
18 this phone call, and we can hear it.

19 (Audio played.)

20 MR. C. MATTHEW RITTGERS: A couple things there, and
21 then we're going to jump into the November 7th meeting.

22 One is, elected officials or candidates for office can
23 say that they're going to win. They can also relay their
24 confidence in their colleagues.

25 Rob and Brian were claiming that they weren't from here,

1 that they didn't know council, that they didn't know John
2 Cranley. They didn't know if -- they could invest anywhere in
3 the country, in any city, and they wanted to know if this city
4 and county and region would support a development deal at
5 435 Elm, which we all know now is a no-brainer project.

6 A candidate has the ability, and we hear it. In our
7 House and Senate, we have people called whips that count
8 votes, majority whips, minority whips, and they count votes,
9 saying I'm confident that I can get the votes to pass
10 universal healthcare, or to build the wall, or whatever it is.

11 That is permissible for a candidate and an elected
12 official, especially when someone is saying I'm from out of
13 town. I don't know if I want to put my money here. Will it
14 be supported.

15 And so what we hear in this first meeting on November 7th
16 is P.G. vetting the project. And he asks them questions. And
17 I'm talking now about Rob and Chinedum. He asks them what
18 they want from the city.

19 And you're going to hear, they say ordinary, competitive,
20 nothing out of the ordinary, normal CRA, which is Community
21 Reinvestment Act.

22 He says -- they talk about a hotel, they talk about it
23 being next to the Convention Center. I mean, these guys know
24 that.

25 So at this lunch, now we're at November 7th, at an

1 in-person meeting, we will hear Mr. Ndukwe say to
2 Mr. Sittenfeld that after they just do their due diligence,
3 talking about builders and architects and going through
4 zoning, they think they're going to have \$1.8 million into it.

5 And he's referencing this next to Rob, who is the money
6 guy, who is not from here, who then says, "Well, I don't know
7 if we -- we're worried about the mayor, ultimately. We're
8 worried. Are people going to support this?" They're asking
9 elected officials. An elected official is permitted to
10 express his confidences both in a project and himself, and his
11 colleagues, and the mayor.

12 Same lunch, still doing the vetting. I don't know the
13 truth to this, but what P.G. hears is that they have a strong
14 letter of intent from an office tenant that this -- back in
15 2018, they're talking to a hotel group, and that they're
16 thinking about putting high-end condos on top of this blighted
17 property that's hurting the city to the tune of \$400,000 a
18 year.

19 This November 7th is 40 days before P.G. properly records
20 the PAC donations that are at issue in 2018 in this case,
21 which happened on December 17th. We'll talk more about that
22 shortly.

23 He continues to vet the project at this lunch, which is
24 at Nada, which is a block north of here, in a public spot.
25 And you'll hear it on the tapes. It's loud in there, and

1 there are people around.

2 P.G. doesn't hide the fact that he's with Chinedum, and
3 that Chinedum's there with a potential investor, the investor
4 in 435 Elm. There's no hiding that.

5 And you'll hear some comments that, at the end of this,
6 it's a \$75 million deal for this region. That's the claim.
7 Mr. Ndukwe says, "Look, this is going to be a huge win if we
8 can do that next to the Convention Center."

9 P.G. asks how many units in the hotel? 140. He's
10 vetting it.

11 It's still early in the lunch before they go across the
12 street, P.G. asks about a CRA. This is the Community
13 Reinvestment Act. This is what you really need from the city.
14 And they tell him nothing out of the ordinary, but just
15 competitive.

16 And P.G. then comforts them right then and there with his
17 support and the support of his colleagues, "Tax abatements for
18 the abatement. I've never had an issue with that."

19 By the way, a candidate's permitted to tell others their
20 stance from the past. P.G. was the top two vote getters in
21 the last two elections, youngest ever on council in the first
22 election they ran. And so we hear candidates say, when
23 they're behind in the polls, they're still going to win. And
24 that's what candidates do when they run for office. They say
25 no, no, no, don't believe the polls. I'm going to win.

1 So yeah, P.G. did say yeah, I'm going to be the next
2 mayor. And P.G. was ambitious. What he says here, he tells
3 them what has always been his actions, which is for the
4 abatement, "I've never had an issue with that, if it's land.
5 But otherwise, as you know, it has a derelict building sitting
6 on it and isn't productive for the city, that not's a big
7 lift."

8 And that's when he says -- this is continued. It just
9 didn't fit on the slide. "And even some of my colleagues --"
10 now he's giving confidence -- "talk kind of crazy talk about
11 the CRAs. They're routine. So yeah, I can certainly shepherd
12 the votes too. My colleagues are going to support it."

13 Let me go back for one second.

14 So after the vetting of the project, the lunch lasts
15 about 57 minutes, everyone stands up, and Chinedum leaves, and
16 P.G.'s ready to leave.

17 And Rob, the undercover agent, says to P.G., "Hey, can
18 you come across the street with me real quick?" And they're
19 truly ready to leave. P.G. has no idea what he's going to do
20 across the street, but he says, "Sure, I'll come across the
21 street with you." And there's videos of that.

22 And across the street, and it's continued from the lunch,
23 there's a new, a pretend worry that Rob, the investor, has
24 about actually putting all this money in our region. And he's
25 talking to one of our elected officials.

1 And the worry is the mayor, who P.G. obviously already
2 has on his radar, especially with regarded to Chinedum, is
3 going to veto a project because Chinedum's got his name on it.
4 That's the new FBI undercover agent's story.

5 And we'll hear what P.G. says about the mayor. He tells,
6 at the lunch, his friend, that the mayor actually likes
7 development, and so if the project is what they claim it to
8 be, that they don't have to worry about the mayor. The
9 mayor's not going to stand in the way of a good deal.

10 If this project is competitive, nothing out of the
11 ordinary, its actually \$75 million, across from the Convention
12 Center, he's saying you don't need a veto for the vote. Don't
13 worry about John Cranley. It's like two trains passing in the
14 night.

15 This is across the street with the agent, same sort of
16 thing. "I'm worried about, we want this to be Cranley proof."

17 And this is when the agent is saying things that would --
18 a corrupt person would say, oh, yeah, you give me the money,
19 I'll get you the Cranley proof votes. Two trains passing in
20 the night.

21 The agent, "What's the best way for us to get that to
22 you, to get that deal, you know what I mean?"

23 P.G., "Do you guys know he's going to veto it?" After he
24 already told them at the lunch that he was not going to veto
25 it, not to worry about it. And this is upstairs in the 580

1 building. It's just a block north of here.

2 (Audio played.)

3 MR. C. MATTHEW RITTGERS: This is after P.G. had told
4 him at the lunch that they don't even have to worry about the
5 mayor.

6 We're going to see and hear from the evidence that these
7 three things, the form of the donation, which is LLC bundling,
8 and I'm going to jump into that October 26th call. That was
9 first requested and mentioned by the government, or their
10 actors. The amount that they wanted to donate, also the
11 government. 2019, you'll never hear P.G. even ask for a
12 donation.

13 And the third, making donations to the PAC. It is their
14 right. A person that wants to financially support a candidate
15 does not -- he cannot force someone to say you've got to also
16 donate to me in addition to your fundraising or bundle.
17 That's not his choice.

18 He can't say -- he did say, I would prefer my campaign
19 donations, but he can't say you don't -- he cannot tell them
20 they have to donate to the campaign. And they say,
21 ultimately, that they'll donate to his PAC.

22 And we know this. This is the October 26th call. When
23 we heard that October 30th call that I said was out of
24 context, this is the very first recorded call between Chinedum
25 and P.G.

1 And it's on October 26th, and this is what the FBI tells
2 him to say to P.G., which is that they, meaning Rob and Brian,
3 "They got a ton of LLCs, and I was going to talk to Jay about
4 this, but I want to see if there's a way to tee up getting you
5 with them before they change everything in November." That's
6 the law change which, again, it's a donor's rights.

7 And that's coming from the FBI and their agents to say
8 LLCs. These are -- he is not just making this up. They meet
9 and script things and plan things. "We want to do it before
10 the law change in November." This is the first recorded call.

11 And then we already heard on this October 30th call,
12 where he then, again, mentions the LLCs and asks about the
13 drop dead date. And they actually pick a date, I think right
14 after it.

15 The amount of the donation. We heard this in the call
16 already. Mr. Ndukwe says to Mr. Sittenfeld that he can help
17 raise 20, and he's referring to thousand dollars, over the
18 next couple of -- oh, sorry.

19 The beginning of the slide, where I should have started,
20 Mr. Ndukwe says that "he's going to be able to get you close
21 to \$20,000 in the next couple..." and he stops.

22 P.G.'s response down here is that he would be incredibly
23 grateful if Mr. Ndukwe fundraises \$20,000 over the next couple
24 of years.

25 And Mr. Ndukwe, again, acting on behalf of the FBI and

1 what they tell him to say is, "No, no, no. It's going to be
2 over the next couple of weeks."

3 P.G. in that first meeting tells them on tape what is
4 most valuable, and we know why, which is campaign donations,
5 obviously. Like money directly into a campaign is the most
6 valuable thing.

7 So what happens? Well, the undercover agent, Rob, offers
8 P.G. cash, \$10,000. P.G. does not know he's on a wire,
9 doesn't know he's being recorded. You can hear him call a
10 campaign finance compliance person and ask what you're
11 permitted to report and accept as a candidate to a campaign or
12 a PAC.

13 And he hangs up the phone, and he apologizes, says he's
14 got to be aboveboard, and you can't accurately report that.
15 There's a limit of how much cash you can take from
16 individuals. He says no.

17 So next Rob says we've got -- there are two things that
18 he says, and I only have one slide for this, but cashier's
19 checks and money orders.

20 They say something like, hey, you can figure out how to
21 interject them, I think that was the language, meaning P.G.

22 And he calls him back -- this is after the November 7th
23 meeting, after he checks with finance teams and lawyers and
24 accountants, and he says, hey -- he's apologetic.

25 He's like, I cannot do that. He never took money orders

1 or cashier's checks, and he tells them, "No, I can't take
2 cashier's checks or money orders." So he turns that down.

3 So the next thing they do -- I'm talking about the FBI
4 agent, Rob, who is an investor. They said, okay -- this is
5 after P.G. has repeatedly said you can't do it these first
6 three ways, but if you want to, which they kept saying they
7 wanted to, there's a lawful legal way, and it's through LLC
8 checks, if that's your choice, or you can just write a check.

9 LLCs are limited liability corporations, I think. It's
10 like small businesses. You know, like a big -- it's odd, like
11 corporations like Procter & Gamble or Kroger can't write
12 checks to candidates, but these small businesses, LLCs, can.
13 And so that's what they're referring to is like small
14 businesses that are incorporated.

15 So the agent says, "Hey, we've got LLC checks for you,"
16 and they write them out. And they give them to him. I think
17 this is now December, and P.G. says thank you.

18 And he has compliance checks in his campaign. The checks
19 don't say LLC or corporation. You can just write a check that
20 says Kroger. Some of us might know that that's a corporation,
21 but it doesn't -- you can't tell.

22 And here's the trick. Two of the checks were actually
23 corporations, but they didn't say it on the check. And these
24 guys told him that they were LLC checks.

25 But even with that, P.G. never cashed them. In fact, on

1 a recorded phone call, or on a wire, he says he actually
2 shredded them. And he apologized to these people for making
3 them jump through all these hoops, and he shredded the checks.
4 Didn't take corporate checks, even though it didn't say
5 corporation on it.

6 And here's a call between Rob and P.G. on December 4th,
7 related to one of these incorrect donations. And it puts
8 things in context later in this case too.

9 (Audio played.)

10 MR. C. MATTHEW RITTGERS: All right. So in that
11 call, P.G. is talking to the undercover agent, Rob. And he
12 tells him, hey, if you want to check with your universal
13 buddies and investors to make sure that these individuals who
14 you're bundling and fundraising from actually are doing it
15 from an LLC, or just let me know their names and we'll check.

16 Ultimately -- that's December. That will put some other
17 things in context in 2019 that you'll hear, that kind of
18 debacle with attempting to donate improperly.

19 You've already heard Ms. Brunner referenced, and she was
20 the head of the port, president and CEO. Ms. Brunner, I
21 think, has been the head of the port for about a decade.

22 And I believe the reference was that P.G. was pressuring
23 her about 435 Elm. Well, we're going to hear that P.G.
24 actually was communicating to her and nudging her about a lot
25 of things that the city needed to get done.

1 And before I get to her, this -- there's no dispute in
2 this case. No money in P.G.'s personal pocket. No money in
3 his personal bank account. No donation commingled with any
4 campaign funds. That is not in dispute.

5 Ms. Brunner, she too believes that Mr. Ndukwe has
6 backing, is ready to do a deal. And the issue in the
7 negotiations -- Ms. Brunner is trying to create a partnership
8 with Mr. Ndukwe, and the issue is the ground lease amount,
9 because she and the port maintain the ground lease,
10 Mr. Ndukwe had the air rights.

11 So Ms. Brunner and Mr. Ndukwe were trying to come to
12 terms on a partnership. There was a third-party appraisal
13 that set -- and the third-party appraisal is actually later, I
14 think 2020, where the third-party appraisal, which was
15 Mr. Ndukwe and another partner of his, in 2020 had had an
16 independent appraiser do this for \$57,000.

17 And Mr. Ndukwe's offer to Ms. Brunner was \$66,000. And
18 she had said to him that she thought \$350,000 was the most
19 appropriate.

20 P.G., who is getting information from both sides,
21 Ms. Brunner, city economic development director, Mr. Ndukwe,
22 this amount, this lease amount would directly impact their
23 investors, Rob and Brian.

24 And there's a reference in one of the tapes, a suggestion
25 from P.G. to Mr. Ndukwe. P.G. says to Chin, could you get a

1 deal done at 275 per year? And the claim is that he's doing
2 his bidding because of PAC donations.

3 This is what they claimed the property would ultimately
4 look like if developed. As we've seen, this is what the
5 property looks like today, as we sit here today, and looked
6 like for many years.

7 Now, with Ms. Brunner, this pressure comment that we've
8 already heard, these are text messages. I asked P.G. if he
9 had contact with Ms. Brunner about other things in addition to
10 435 Elm, things that were going on in the city that were
11 important for the city.

12 And he got these texts. I'm just going to highlight a
13 few. There's a lot, a pdf, and these are P.G.'s
14 communications with Mrs. Brunner.

15 The first one, March of 2017, "Hi P.G., I just sent you
16 an email at work about Hudepohl. Call me if you have
17 questions."

18 Hudepohl is a redevelopment. I believe it's what's
19 called a brownfield site, where you have contaminants in the
20 soil. And there's federal funding for it, and the port was
21 trying to clean it so it would be ready for redevelopment.

22 P.G. was getting in the weeds, rolling up his sleeves
23 with her on this deal, and we have that actually in emails as
24 well. I highlight the following text from the port tour.

25 Mrs. Brunner invited council members, commissioners, and

1 civic leaders to go on a tour, to actually go around, put
2 boots on the ground, and to see the site that the port owns.

3 And the reason why I highlighted that is that we'll hear
4 from testimony that P.G. was the only one on council that went
5 on that tour.

6 There is a de facto thing that happens when certain
7 people are the ones that are very involved in development.
8 Some people are very involved in animal rights. People kind
9 of get their niche.

10 P.G. was the only one on that tour, and he then invites
11 all his council members, says, "Hey, this is great. Everyone
12 should do it. Go get boots on the ground."

13 The third text, "Hi, can you have breakfast --" this is
14 Mrs. Brunner to P.G. -- "with Bruce Katz?" This is 2020.

15 Bruce Katz is a preeminent expert on urban planning
16 revitalization. The breakfast had four people, Phil Denning,
17 the city economic development director, P.G., Mrs. Brunner,
18 and this guy who is in from out of town, the expert on
19 redevelopment and revitalization.

20 The fourth one, 2019, moving back one, "We have
21 8.3 in Mt. Airy and 2.5 in Sedamsville." That's Mrs. Brunner
22 telling P.G. about acreage of certain sites that they have.

23 We have emails, and I believe she'll testify to it, P.G.
24 was actually very persistent with her about this. We have
25 emails where she actually apologized to him, because he would

1 follow up on top of an email and say, hey, what's going on
2 with these sites, and she says, "Oh, sorry. I'll get back to
3 you on Monday." That's her response after two previous emails
4 to P.G.

5 He goes, he meets the employee of the port. He puts his
6 boots on the ground on these sites, looking at a development
7 project for homeless veterans, and -- you know, this is a
8 non-profit. And he has boots on the ground on these sites,
9 urging her, saying send me this information. She actually
10 even apologizes in writing.

11 And ultimately, on December 26, there's an email between
12 Mr. Sittenfeld and Mrs. Brunner, the day after Christmas,
13 where he's talking -- again, this is, I believe, about four
14 months, yes, four months after this text, where the veterans
15 project -- national heads are coming into town, and he says,
16 "Hey, can I take them to these sites? I think I personally
17 found a better site that's not a port property, but I would
18 still like to give them options."

19 The point of all this is that he is very involved, very
20 ambitious, and very involved and hardworking. And it didn't
21 matter what it was. If he thought there was this cog in the
22 wheel and red tape, he would absolutely get involved. And
23 that context does matter.

24 So I mean -- before we jump our eyes on that. On
25 September 24th, there's a meeting you've already heard

1 referenced at a hotel in Columbus.

2 What happens before that is relevant, not because I
3 believe it to be true. So on September 19th of 2019, and
4 you'll hear this on the recordings and referenced,
5 Mr. Ndukwe's accused of sexual assault. And it's all over the
6 papers.

7 I am not here to speak about any of the validity of that.
8 Frankly, it might be false. But the reason why it is
9 important is because it goes to his intent. And when that new
10 fact is introduced, he considers pausing any Ndukwe project in
11 front of the city because it might be a distraction.

12 He says things like, you know, everyone deserves to be
13 innocent until proven guilty. But this is a distraction,
14 potentially, and he's considering whether or not he should
15 pause project.

16 And so, in fact, October 19, there's another unrecorded
17 call, which we will hear the description as on or about
18 October 16th of 2019, Mr. Ndukwe conducted a non-recorded
19 telephone call to P.G. Sittenfeld.

20 The purpose of Mr. Ndukwe's call was to confront
21 Mr. Sittenfeld about reported comments Sittenfeld made about
22 Ndukwe. Ndukwe heard from Steve Hemburger, who is a
23 developer, that Sittenfeld said that any development project
24 related to Ndukwe should not be presented to City Hall.

25 Sittenfeld made the comment following accusations made

1 against Ndukwe. Sittenfeld defended himself by citing there
2 were a lot of negative things out there about Ndukwe.

3 Ndukwe said that Sittenfeld told Ndukwe the public
4 comments made by Hamilton County Prosecutor Joe Deters has
5 changed his perception because, ultimately, a month later,
6 after he had considered pausing everything, the head
7 prosecutor down here decided not to bring charges.

8 So when they had this call, P.G.'s like, look, these
9 comments by this head prosecutor has changed by perception of
10 things. But the fact that this entered his mind means, like,
11 I don't know if the city would want partnerships because of
12 this distraction goes into the thing that we're going to hear
13 next.

14 September 24th of 2019, P.G.'s already in Columbus with
15 leaders from around the State of Ohio, and they knew it. And
16 they ask him if they can come meet Vinny, who has already been
17 referenced. Sports book has already been referenced,
18 potential gambling. And I will correct some things now that
19 we heard in opening.

20 What happens is -- this is after the very beginning of
21 this meeting is P.G. talking to these guys with his chief of
22 staff in the room, and they picked a location for
23 atmospherics, a hotel. And they handed him checks at the end
24 of the meeting, which is completely fine to accept.

25 But in the meeting, the very beginning of the meeting,

1 the first segment is when P.G. is talking about potentially
2 pausing projects that Mr. Ndukwe has before the city because
3 of this fact.

4 Actually, I don't think it's going to be in the
5 transcript of the video that you'll all see, but it goes to
6 his intent, and you're going to hear about it from people on
7 the witness stand.

8 And so what do they do in this meeting? They say -- this
9 is at the beginning of the meeting, also probably won't be
10 played, but it will be on cross-examination, I assume.

11 Rob, undercover, he says to P.G., "I realize this is in
12 relation to this sexual assault allegation against
13 Mr. Ndukwe," that they have jitters, essentially, about this
14 deal.

15 And he's saying, "It's either like, hey, we're
16 comfortable and really like this deal and this whole sports
17 book side of it and everything, and we're staying in --" and
18 he goes on to say -- "or we waste a lot of F'ing time and
19 money, and we're just going to cut our losses."

20 P.G. says, "I don't think you guys should do that, not
21 invest in our region."

22 And so what happens next is a hypothetical discussion
23 about gambling. Gambling does not get approved down here at
24 City Hall. P.G., when he was on council, he had no say in any
25 of that. That goes to the state house up in Columbus.

1 And the way that it is introduced in this meeting, one,
2 after this conversation about them maybe cutting their losses
3 and leaving and not investing all this money in this blighted
4 project that is hurting our city, because the money didn't go
5 away when the port took it over.

6 The port gets funding from the county and the city. So
7 that cost \$400,000 a year and is still there. And so when
8 these guys tell P.G., hey, we might cut our losses and not
9 invest here, but this sports gambling stuff might make us more
10 comfortable, that's how they start the conversation.

11 Then they open up this word "controlled environment."
12 They never say monopoly. They never say they want to be the
13 only one. They talk about it under the guise of being
14 concerned about gambling addicts, and they create imagery in
15 this video about that's why they want it.

16 And then at the very end, they say something about
17 competition. And P.G. says, "There's a good public argument
18 for all of that." That's his response.

19 There isn't a city or municipality in this country that
20 wouldn't put some sort of regulation zoning on gambling. And
21 if it gets passed in the state, even Las Vegas, when Nevada
22 passed it, there is certain zoning and regulation, when
23 gambling gets passed, up in Columbus.

24 So this is when Vinny gets introduced to the meeting,
25 where P.G.'s chief of staff is, on September 24th.

1 Vinny says -- he mentioned keno, which I think is a
2 gambling-type thing, "They have no idea the burden that's
3 gonna be and the public outcry when nitwit keeps going to the
4 gas station losing his money every ten minutes because he's
5 putting money on a horse, or he's putting money on a game.
6 He's betting the first, first pass."

7 Brian, another undercover agent: "He can't pay his
8 rent."

9 Vinny: "He can't pay his rent."

10 P.G.: "Right."

11 Vinny: "Now they're all gonna be pissed off that that's
12 going like that."

13 P.G. says: "By the way, I'm not convinced the public at
14 large wants that version of things anyway."

15 Vinny: "No, of course not."

16 Sittenfeld: "Right."

17 Vinny: "So what we learned in Rhode Island was it needs
18 to be super controlled."

19 They introduced the control based on they can pick the
20 script. It's their script. It's their pretend story. So
21 they said we need a monopoly, period, or we're out.

22 They say they want a controlled environment because of
23 the burden, the public outcry, and gambling addicts.

24 P.G. says -- here he said -- Vinny goes on to build this
25 up, "It's not real money, so people lose, people lose track.

1 People lose track and it's not real. So I'm not convinced.
2 So that's why I --" Vinny -- "would prefer Cincinnati to have
3 a controlled environment." He expressly states why he wants a
4 controlled environment right there.

5 And at the end of the conversation, I'm going to play
6 parts of the video here right now, Vinny puts this in after
7 they've been talking now for over 30 minutes, maybe even an
8 hour, "I think it should be very high financially. I think it
9 should cost a lot of money to get into this so that you keep
10 people out of it, keep it controlled, you limit access, you
11 limit competition."

12 P.G.'s response is: "And there's a good public argument
13 for all of that."

14 He's entertaining their comments about whether or not
15 there will be zoning in Cincinnati. They never said they want
16 to be the only one. They never said they need a monopoly.
17 And they put this in at the very end, and P.G. doesn't say
18 yeah, I'll do that. He says, "There's a good public argument
19 for all of that."

20 And this is the hotel room that they set up, knowing he's
21 in Columbus, and they have chicken wings.

22 (Audio played.)

23 MR. C. MATTHEW RITTGERS: That's one clip. This is
24 progressing through the meeting.

25 (Audio played.)

1 MR. C. MATTHEW RITTGERS: 2019, we heard from the
2 judge's preliminary instructions, that one of the accusations
3 is that P.G. created a scheme to solicit money from these
4 undercover agents. You will never, ever hear him ask for a
5 single penny in 2019.

6 And in 2019 -- by the way, he can ask. He can say do you
7 guys want to fundraise? He can ask someone if they want to
8 donate. He can put it on a billboard, donate here now.

9 They then donate to his PAC again in 2019. And P.G.
10 properly records it. In fact, that's what we saw at the
11 beginning, the recorded checks. His campaign staff asks who
12 the names are attributed to. He gets the names from them.

13 And P.G.'s wife gets pregnant in 2019. So they come to
14 him -- and this is on video, and they give him a gift. And
15 they say it's our congratulations for your pregnancy, for your
16 wife's pregnancy. We're going to watch this in a minute.

17 And the reason this is coming into evidence is because
18 the government's contention is that there's one line in there
19 where they say, "You've been working your ass off for us," and
20 it's part of the bribe.

21 And then in 2019, they sit down with P.G., and we're
22 going to watch it on video. They talk about his wife's
23 pregnancy, and they put a box of cigars and bottle of scotch
24 in front of P.G.

25 There are 20 hours of interactions. There's never an

1 interaction where P.G. drinks scotch. Does he like scotch?
2 He doesn't. He doesn't smoke cigars. He doesn't smoke
3 tobacco. And they put this in front of him.

4 And P.G., a candidate and an elected official, is
5 permitted to accept gifts, but if they're over \$70, they're
6 supposed to report them. And so they didn't tell him the
7 value. They'll have the receipts that they'll show us.

8 His mistake was not saying how much is this? He doesn't
9 drink scotch or smoke cigars, and he didn't turn away their
10 gift, and here's the video.

11 (Video played.)

12 MR. C. MATTHEW RITTGERS: I believe the government's
13 transcript and video cuts off shortly after the words "you
14 worked your ass off."

15 But they continue, this goes to P.G.'s thoughts and their
16 interaction with him about childhood and parenthood, and
17 that's what they continue to talk about, but I don't know if
18 you'll have that back with you.

19 And they continue to talk about this.

20 (Audio played.)

21 MR. C. MATTHEW RITTGERS: The government has admitted
22 in their opening that there is no express bribe on any tape,
23 20 hours of tape. No express quid pro quo. The time that's
24 actually mentioned is very early, when P.G. expressly states
25 that there will not be, and Mr. Ndukwe agrees.

1 So you're going to be asked to go inside his head and
2 determine his intent. And you heard on this tape, "I've got
3 to invite you guys over to dinner." P.G. got people together
4 all the time, Ms. Brunner, people that you'll hear about
5 throughout this case.

6 P.G. even invited over the U.S. Attorney with these
7 undercover agents at the same time. And you're going to be
8 asked to determine what he thought these guys were. If he
9 thought that they were aboveboard and not corrupt, if he
10 thought he was doing anything wrong.

11 He introduced them publicly, out in the public to civic
12 leaders all over town as the investors behind Chin and
13 435 Elm. Steve Leeper at 3CDC, on the tape, "Hey, Steve, I'd
14 really like you to meet these guys."

15 Steve Leeper and 3CDC is a huge non-profit that does
16 development in Cincinnati, would love you to meet these guys.
17 Introduces them to the head of the Convention Center. His
18 name is Rick Booth. And P.G. introduces Rob and Brian to Rick
19 Booth.

20 P.G. was very pro-development. I can think of one deal
21 where he was not, and you may or may not hear from this
22 witness.

23 There was a deal in Oakley, a development in Oakley with
24 FC Cincinnati, our soccer team. And there's a potential
25 witness the government has said, his name is Jeff Berding.

1 He's the president and CEO of FC Cincinnati.

2 FC Cincinnati, the owners, are some of the wealthiest
3 individuals and powerful individuals in this area, hundreds of
4 millions of dollars, and they had donated over several years
5 to P.G.

6 In late 2017, November of 2017, FC Cincinnati was trying
7 to get a bid with the MLS for a major league soccer team. And
8 in order to get that, one of the two requirements was to have
9 a site ready spot, and they picked Oakley.

10 P.G. was open, on the public record, about his opposition
11 to this, for many reasons, most of which were too many open
12 questions, giving too much leverage to these people.

13 In collection, these people donated \$60,000 or more to
14 P.G.'s campaigns in previous years. Mr. Berding is their
15 voice, the CEO and president. He voted no.

16 And ultimately, they came -- FC Cincinnati actually got
17 the bid because it actually passed through council, five-three
18 or six-three, and they wanted to put the stadium then downtown
19 in the west end.

20 And P.G. wanted them to pay their fair share of taxes.
21 The stadium is owned by the port, but the owners can reap the
22 benefits, profitability from using this for stadium things,
23 like concerts or soccer team, but they don't have to pay
24 property taxes.

25 So he's instrumental in negotiating that these owners pay

1 their fair share, which is \$25 million to Cincinnati Public
2 Schools, which they would not have had to pay. You know, and
3 the claim that Mr. Berding makes now is that P.G., on a phone
4 call -- FC Cincinnati bought a lot of land on the west end.
5 And they made a mistake. They bought land they didn't know
6 there was a 17-year lease on, and the ballet, a non-profit,
7 had the lease.

8 And there's this everyone's pressuring everybody to try
9 to get a deal done at the last minute. FC says it's going to
10 cost us \$500,000 a week or a month if we delay zoning. The
11 ballet says there's nowhere for us to go.

12 Mr. Berding claims that on a phone call with the chair of
13 the non-profit, P.G. said, "Well, then just give the ballet
14 \$10 million so they can relocate." That didn't happen, but
15 that's what he might plan.

16 He's the voice and the mouthpiece for some of the
17 wealthiest individuals in southwest Ohio that P.G. thumbed his
18 nose at.

19 P.G. was a hardworking, ambitious candidate and elected
20 official at one time who always did what he thought was best
21 for the City of Cincinnati. And when there's a cog in the
22 wheel, when there's too much red tape, people knew who to come
23 to.

24 So I hope -- you will hear from a lot of people who talk
25 about why people came to him on development deals, like we

1 talked about like the veterans project, or anything to get the
2 cog out of the wheel and get unstuck.

3 And yes, he was involved in 435 Elm. The project was
4 draining the county and city to the tune of \$4 million every
5 ten years. He believed his friend was being treated unfairly
6 by the mayor, and he believed that that was his job.

7 And after you hear all the evidence, I believe you'll
8 find him not guilty of all counts.

9 THE COURT: Thank you, Mr. Rittgers.

10 Is now an appropriate time to break for lunch?

11 MR. SINGER: Yes, Your Honor.

12 MR. C. MATTHEW RITTGERS: Yes, Your Honor.

13 THE COURT: Okay. Ladies and gentlemen of the jury,
14 we've completed the openings. Now would be a time to break
15 for lunch.

16 It's about 10 after 1:00 right now. Why don't you try to
17 reassemble shortly after 2:00, like around 2:05 or so in the
18 jury assembly room upstairs. Enjoy your lunch.

19 Please remember don't talk with anyone about this case.
20 Don't do any research about this case. Don't communicate with
21 anyone about the case. If anyone should try to communicate
22 with you about the case, please let me know.

23 And have a good lunch, and we'll see you when you get
24 back.

25 (Jury out at 1:08 p.m.)

1 THE COURT: Is there anything we need to discuss on
2 the record before we break?

3 MR. SINGER: No, Your Honor.

4 MR. C. MATTHEW RITTGERS: No, Your Honor.

5 THE COURT: There is one thing I did want to note.
6 Sometimes after lunch -- I noticed in the last trial,
7 sometimes after lunch can be a sleepy time for people on the
8 jury who are forced to sort of sit and listen and not
9 interact, which can be difficult when you're sitting there,
10 and there's something about a courtroom environment that seems
11 hushed or something.

12 In any event, if when you are interviewing a witness, you
13 notice that there's a juror who appears to be nodding off for
14 any reason, just what we've done in previous trials is to ask
15 for a sidebar, I'll tell the jury they can stand up and
16 stretch while we're at sidebar, and we'll just do a sidebar
17 and come back. So just be mindful of that, all right?

18 All right. With that, we can adjourn for lunch.

19 (Lunch recess.)

20 THE COURT: All right. Is there anything we should
21 discuss before we bring the jury back in, Mr. Singer?

22 MR. SINGER: Not from the government.

23 MR. C. MATTHEW RITTGERS: No, Your Honor.

24 THE COURT: Very good. Scott, could you bring the
25 jury back.

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1 (Jury in at 2:24 p.m.)

2 THE COURT: I'd like to congratulate you all on
3 passing the first day obstacle course. Every day it gets a
4 little harder.

5 We're now at the point where the government is going to
6 call its witnesses.

7 Would the government like to call its first witness,
8 please?

9 MS. GAFFNEY PAINTER: Yes, Your Honor. Thank you.
10 The government calls Kevin Flynn.

11 THE COURT: Very good. Good afternoon, Mr. Flynn.

12 THE WITNESS: Good afternoon.

13 (Government witness KEVIN FLYNN, sworn.)

14 THE COURT: You may proceed.

15 DIRECT EXAMINATION

16 BY MS. GAFFNEY PAINTER:

17 Q. Mr. Flynn, will you please state and spell your name for
18 the record.

19 A. Kevin Flynn, F-l-y-n-n.

20 Q. Mr. Flynn, what is your profession?

21 A. I'm retired now. I'm a retired real estate lawyer,
22 retired adjunct law professor at the College of Law, and
23 retired city council member.

24 Q. Back in 2015, what did you do?

25 A. I was a practicing lawyer, as well as a member of

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1 Cincinnati City Council.

2 Q. How long did you serve as a Cincinnati City Council
3 member?

4 A. Four years.

5 Q. How did you become a Cincinnati City Council member?

6 A. I was elected in the election of 2013.

7 Q. How many council members are there on city council?

8 A. Nine.

9 Q. How many council members constitute a majority?

10 A. Five.

11 Q. Is that also sometimes referred to as a simple majority?

12 A. Yes, because there are certain activities, certain
13 nuances of the law that require a super majority, or six or
14 seven votes.

15 Q. Who is the official head and representative of the city
16 for all purposes, except as outlined in the city charter?

17 A. The official head is the mayor.

18 Q. What is the city charter?

19 A. City charter's kind of the Constitution of the city. It
20 sets forth the basic framework of how the city government is
21 to operate.

22 Q. In 2018 and 2019, who served as the mayor of Cincinnati?

23 A. That would have been John Cranley.

24 Q. What are some of the powers and responsibilities of the
25 mayor?

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1 A. The mayor presides over council meetings, signs
2 legislation and/or vetoes legislation, a lot of ceremonial
3 activities as far as ribbon cuttings, and new projects being
4 developed, as well as sort of being the face of the city.

5 Q. Now, you mentioned a veto. What's a veto?

6 A. So a veto is a power that the executive, in this case the
7 mayor, has to nix, to stop legislation from going forward
8 that's been voted on by a majority of council.

9 Q. Now, if the mayor vetoes something that has been approved
10 by city council, is that the end for whatever it is that has
11 been vetoed?

12 A. No. So the mayor has, I believe, four days to veto
13 legislation. If it is vetoed, it will go back on the calendar
14 docket, or the calendar for council, I believe three -- the
15 next three regularly-scheduled meetings, two or three
16 regularly-scheduled meetings, at which time council can take
17 it up and try to overcome the veto with a super majority.

18 Q. And how would city council overcome a veto?

19 A. So if six members of council determine that the law
20 should go forward, notwithstanding the mayor's veto of it, it
21 would become law without the mayor's signature.

22 Q. How many votes does it take of council members to
23 override the mayor's veto?

24 A. Six.

25 Q. Other than the mayor and city council members, are there

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1 any other high level officials in Cincinnati city government?

2 A. So the CEO and the chief administrative officer of the
3 city is the city manager.

4 Q. What is the city manager?

5 A. So the city manager is -- and really, Cincinnati was one
6 of the original adopting cities of management of this type,
7 and it's to take -- the idea is to have professional
8 management by a city manager who is not a politician, is not
9 elected, is rather appointed because of their expertise.

10 Q. And what are some of the things that the city manager
11 oversees?

12 A. So the city manager oversees really the workings of the
13 entire government as the CEO, including all of the or most of
14 the departments and offices under his office.

15 Q. Now, you mentioned overseeing departments. What are
16 departments?

17 A. So within the City of Cincinnati, different areas of
18 jurisdiction would fall into the different departments. So
19 there's a water works department that handles water. There's
20 the department of community and economic development, which
21 oversees ongoing economic transactions development in the
22 city. There's the fire department, the police department,
23 storm water sewers, and the list goes on, the department of
24 law, et cetera.

25 MS. GAFFNEY PAINTER: Your Honor, may I approach?

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1 THE COURT: You may.

2 Q. Mr. Flynn, in front of you I have placed what's been
3 marked for identification as Government Exhibit USA 1B. Do
4 you recognize this?

5 A. Yes.

6 Q. Excuse me. I mean 1A.

7 A. Yes.

8 Q. Forgive me. I believe I do mean 1B.

9 A. 1A is the structure, 1B is the planning.

10 Q. Okay. Forgive me. All right. I'm showing you what's
11 been marked for identification as Government Exhibit USA 1A.
12 Do you recognize this?

13 A. Yes.

14 Q. What is it?

15 A. It is a diagram table of organization, if you will, of
16 the city, and it provides for the input of city council and
17 the mayor to the city manager, and then the city manager flows
18 through to a number of the departments that we were just
19 talking about in the testimony, although some of these have
20 other direct reporting is under something other than the city
21 manager.

22 So, for example, parks has a board of park commissioners.
23 The employees of parks are still city employees, and so
24 therefore, the city manager has a role with regard to those,
25 but the direct structure goes through the independent board.

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1 So parks has an independent board, recreation has an
2 independent commission, planning commission, the Board of
3 Health, are all sort of outliers in the scenario of the city
4 manager being the direct overseer of those.

5 Q. Now, have you reviewed Government Exhibit USA 1A for
6 accuracy?

7 A. Yes.

8 MS. GAFFNEY PAINTER: The government moves for
9 admission of Government Exhibit USA 1A.

10 THE COURT: Mr. Rittgers?

11 MR. C. MATTHEW RITTGERS: Your Honor, we don't have
12 an objection to that.

13 THE COURT: USA 1A is admitted without objection.

14 MS. GAFFNEY PAINTER: Your Honor, permission to
15 publish the exhibit?

16 THE COURT: You may.

17 MS. GAFFNEY PAINTER: Ms. Terry, will you please
18 publish Exhibit USA 1A.

19 Q. Mr. Flynn, if you could describe what we're looking at
20 here in Government Exhibit USA 1A?

21 A. Yes. As previously discussed, this is a table of
22 organization for the city. It's not exhaustive as to the
23 departments. Some of the departments may be offices within a
24 department, but it's an example of the basic table of
25 organization in the city.

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1 Q. Directing your attention to the bottom line of this
2 exhibit, there are three entries here with asterisks. Can you
3 please explain what that indicates to the jury?

4 A. So as previously stated, the department of health and the
5 department of parks have separate boards that represent them,
6 recreation commission, and I believe the planning commission.

7 We didn't put city planning with an asterisk, but those
8 two fall under the jurisdiction of a commission.

9 Q. Let's talk about some of the specific departments.
10 Generally speaking, what does the finance department do?

11 A. So the finance department is the city's checkbook. It
12 collects the taxes and other revenues for the city, and pays
13 the bills the city incurs, as well as within the finance
14 department is the budget office, which develops the city's
15 budget for the following years.

16 Q. What does public services do?

17 A. Public services, they like to refer to themselves as the
18 city's everyday department. You run into public service
19 workers more often from the city than any other department.
20 They're the ones that collect the garbage, that shovel the
21 snow in the winter, that patch the holes in the street when
22 there's the -- the spring thaw occurs.

23 So they touch the -- they cut the grass. They touch the
24 lives of people every day.

25 Q. What does buildings and inspections do?

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1 A. So buildings and inspections, if you have a project that
2 you want to build, the building permits come through the
3 buildings and inspections office, as well as the other end.
4 If there's a problem property that is violating codes, for
5 example, the inspections department will come out and,
6 perhaps, write a citation relative to that.

7 Q. What does city planning do?

8 A. City planning administers the zoning code, as well as
9 hears requests for variances from the city zoning code.

10 Q. What is zoning?

11 A. Zoning is the concept that the city needs to be planned
12 out, so that you have the more dense uses within one district,
13 going all the way to, you know, restricting land for parkland
14 or single-family residences. So it covers the whole gamut of
15 how property can be used in the city.

16 Q. What does the law department do?

17 A. The law department's the city's lawyers. They represent
18 the city in all its legal matters, all of the departments in
19 their legal matters, as well as the city manager, the mayor,
20 and council.

21 Q. Does the law department have any role or responsibility
22 for drafting laws or ordinances?

23 A. That's another portion of what they do is they have the
24 sole responsibility for drafting those ordinances, all --

25 Q. Of all -- excuse me. I interrupted you. Please.

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1 A. So an ordinance is the legislative act that a council
2 will take to create law in the city.

3 Q. What does community and economic development do?

4 A. Community and economic development is the department in
5 the city that is the liaison with all of the neighborhoods, as
6 well as the place where a person wanting to do business with
7 the city, as far as creating, rehabbing, or building a new
8 building would go to them to see how the city could help that
9 person create the development within the city.

10 Q. Now, you mentioned development. What does development
11 mean in this context?

12 A. So Cincinnati's a build-out city. So typically,
13 development is either tearing down some old buildings and then
14 putting up new ones, or rehabilitating existing structures
15 into a greater use for the city.

16 Q. Now, generally speaking, what role does city government
17 play in real estate development?

18 A. Well, it's very difficult to develop property in the
19 city. One, there's a lot of bureaucracy to work through; but,
20 two, simply it is just plain more expensive and more difficult
21 to do work in the city.

22 So community and economic development will oftentimes
23 offer tax breaks, offer some kind of incentive to get them to
24 develop in the city so the city continues to grow, so that we
25 continue to expand our tax base, so that we can continue to

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1 offer the services that are necessary in the city.

2 Q. During your time as a council member, did you have
3 occasion to vote on development deals with the city?

4 A. I was surprised, when I got to council, that that is
5 probably the majority of the votes that we took on the four
6 years I was on council, that every development field that had
7 any kind of city incentive in it comes through city council to
8 be approved.

9 Q. I want to talk now about the general pathway of a city
10 development project where there are those incentives you
11 testified to being sought from the City of Cincinnati.

12 Now I'm showing you what's been marked for identification
13 as Government Exhibit USA 1B. Do you recognize this?

14 A. Yes.

15 Q. What is it?

16 A. It is a flow chart, if you will, of how an idea that
17 someone has as a private developer ends up coming to fruition
18 in the City of Cincinnati.

19 Q. How do you know that?

20 A. Because I've looked at this stuff.

21 MS. GAFFNEY PAINTER: The government moves for the
22 admission of Government Exhibit USA 1B.

23 MR. C. MATTHEW RITTGERS: No objection, Your Honor.

24 THE COURT: Government Exhibit USA 1B is admitted
25 without objection.

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1 MS. GAFFNEY PAINTER: Your Honor, may I publish the
2 exhibit?

3 THE COURT: You may.

4 MS. GAFFNEY PAINTER: Ms. Terry, will you please
5 publish Government Exhibit USA 1B.

6 Q. Mr. Flynn, let's walk through this document that's being
7 displayed now. If you'll start up at the upper right-hand
8 corner of this diagram, what is a developer?

9 A. The developer is the private entity, non-profit entity or
10 for-profit entity or individual that has an idea to do a
11 project in the city that will somehow increase the utility of
12 that property.

13 Q. If a developer wants to develop real estate within city
14 limits, what's the first step when it comes to city
15 government?

16 A. So if they're going to ask for any kind of assistance
17 from the city, they will generally meet with the community and
18 economic development, someone in that department to discuss
19 the plan and then to discuss what the needs might be.

20 Q. And when you say "plan," what are you referring to,
21 again, just generally?

22 A. So any project, any real estate project of any magnitude
23 has a plan associated with it. So it's going to, you know,
24 look at the end use, and what that project -- I hate to define
25 the term in terms of that, but whatever the deal is that the

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1 developer is putting forth, the plan would be how you get from
2 point A to point B.

3 Q. And what happens next after the developer presents the
4 plan to community and economic development?

5 A. So yes, they would -- and there's a formal application
6 process that CVCC does. They will then send something out to
7 the other departments, indicating that this project is moving
8 forward, and are there any concerns that the other departments
9 may have that need to be addressed with the developer before
10 it goes further.

11 Q. Can you explain that a bit more, about the consultation
12 with other departments?

13 A. So you might think that the fire department, for example,
14 shouldn't really have a role to play in connection with the
15 development project. That seems somewhat counterintuitive.

16 However, you know, the fire department has to be able to
17 service -- if it's a residential development, for example,
18 they have to be able to get to those residences in times of
19 emergency need, whether it be a medical emergency or a fire.

20 And if, for example, that project might be within the
21 flood plane, or in an area where the trucks, the fire trucks
22 would have to travel through flooding to get there because of
23 the Ohio River's periodic flooding, the fire department might
24 well object to that on that basis. So that's why each of
25 these departments need to touch a project so that the city can

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1 act with one voice.

2 Q. After community and economic development confers with
3 other departments and approves the plan, what's the next step?

4 A. So they will create the deal points, if you will, of the
5 transaction, and then they will get with the law department to
6 put those deal points in to a form of a development agreement
7 with a supporting ordinance to be approved by council.

8 Q. After the ordinance is drafted, what happens next?

9 A. It then gets introduced generally by the city manager.
10 It gets put on the agenda by the mayor, and then in the course
11 of the meeting, it will be referred to a committee of council
12 for a formal public hearing relative to it.

13 Q. And you testified to this, but just to be clear, who
14 decides the agenda for city council?

15 A. So the mayor has that authority and that power and that
16 responsibility under the city's charter.

17 Q. Now, if the mayor puts a project plan on the agenda, what
18 happens next?

19 A. So it gets referred to a committee. That's all that
20 happens when it first comes before council.

21 Q. What happens after the committee receives it?

22 A. The committee chair will then schedule a hearing relative
23 to the ordinance that's before it, will allow people to come
24 in and testify relative to it.

25 Typically, they will even have someone from the

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1 department of community and economic development explain to
2 the committee what the transaction is that they're being asked
3 to approve.

4 Q. What happens when that hearing is concluded?

5 A. When that hearing is concluded, the committee chair will
6 take a vote of the members of the committee. If it passes, it
7 gets sent back through the clerk's office to be put on the
8 agenda by the mayor for approval by the full council.

9 Q. Generally speaking, what type of information is provided
10 to council members before they vote on a project plan?

11 A. Typically, it's just the development agreement. There
12 may be a briefing that was given to staffs of council members
13 very shortly before those items would come up on the agenda.

14 Q. Now, if a majority of city council members vote for the
15 plan, what happens next?

16 A. It then gets presented to the mayor for signature if the
17 mayor approves it, or vetoing if the mayor doesn't approve it.

18 Q. If the mayor approves it and signs it, what happens?

19 A. It becomes law upon signature by the mayor.

20 Q. If the mayor vetoes it, what happens?

21 A. Again, it goes back to council then, and if council wants
22 to bring it back up, and they can garner six votes in favor of
23 it, that's what's called overriding the mayor's veto.

24 Q. So it's --

25 A. It becomes law. It's notwithstanding the mayor's veto.

1 Q. Excuse me for interrupting you. So if six council
2 members vote to approve the project, what happens?

3 A. It becomes law.

4 MS. GAFFNEY PAINTER: May I have a moment, Your
5 Honor?

6 THE COURT: You may.

7 MS. GAFFNEY PAINTER: No further questions.

8 THE COURT: Thank you. Mr. Rittgers, your witness.

9 MR. C. MATTHEW RITTGERS: Thank you, Your Honor.

10 CROSS-EXAMINATION

11 BY MR. C. MATTHEW RITTGERS:

12 Q. Good afternoon, Mr. Flynn.

13 A. Good afternoon, Mr. Rittgers.

14 Q. We know each other?

15 A. Yes.

16 Q. But we've never talked about your testimony or this case;
17 is that correct?

18 A. That is correct.

19 Q. Let's talk briefly. You mentioned, I believe, on your
20 direct, you mentioned bureaucracy and red tape?

21 A. Yes.

22 Q. You'd agree sometimes government moves a little too
23 slowly?

24 A. Yes.

25 Q. And you mentioned there's lots of moving parts?

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1 A. Yes.

2 Q. There are certain people on council -- and you served on
3 council between 2013 and 2017, right?

4 A. Correct.

5 Q. And P.G. was on council at the same time?

6 A. Yes.

7 Q. And there were certain people on council that had
8 de facto roles, people that were known for certain things,
9 whether it be in animal cruelty, or development, people were
10 just known for certain things on council, right?

11 A. Some were, yes.

12 Q. Would you agree that P.G. was known as someone that could
13 get things done in the city, get things through council?

14 A. Yes.

15 Q. And the exhibits that you just referenced on direct,
16 USA 1A and 1B, with the charting of the structure and the
17 planning structure, even though that is how that is designed
18 on those two slides, developers would have direct contact with
19 council members early in the process, and also mid or late in
20 processes, correct?

21 A. Generally, early in the process. I for one was a council
22 member that never turned down a meeting with anyone. I would
23 meet with them in my council offices to discuss whatever they
24 wanted to discuss. Sometimes developers didn't have any clue
25 what the process was.

FLYNN - CROSS

1 Q. But even those who did might still want to meet with you
2 early?

3 A. Yes.

4 Q. And you know Dan Schimberg?

5 A. Yes.

6 Q. Very big developer?

7 A. Yes.

8 Q. Honest man?

9 A. Yes.

10 Q. Ethical guy?

11 A. Yes.

12 Q. And he, I believe, runs Uptown Properties?

13 A. Correct.

14 Q. And he would, on occasion, reach out to council members
15 like you or like P.G., to start the process of talking about a
16 potential development agreement?

17 A. I can't ever remember Dan doing that with me.

18 Q. I'm going to show you what's been marked as Defense
19 Exhibit D698.

20 Take a moment and look at that exhibit, Mr. Flynn.

21 A. Okay. Yeah.

22 Q. That's an email from Mr. Schimberg, talking about a
23 potential project that he might have up in Mt. Auburn. And
24 the reason I have it is because it was sent to P.G., and it
25 happens to also be sent to you and Bill Fischer.

FLYNN - CROSS

1 Who is Bill Fischer?

2 A. Bill Fischer was, at the time, a staff member at the
3 department of community and economic development. He was a
4 senior kind of planner.

5 Q. And so this email is a fair and accurate copy of what was
6 sent to you, Bill, and P.G.?

7 A. I would assume so. I don't have any recollection of
8 this. It was seven years ago or so, and it was sent to the
9 city council address.

10 MR. C. MATTHEW RITTGERS: Do you have any objection
11 to this being displayed for the jury?

12 MS. GAFFNEY PAINTER: Is defense moving to admit this
13 into evidence?

14 THE COURT: I don't know.

15 MR. C. MATTHEW RITTGERS: Okay. I'll just talk about
16 the email, Your Honor.

17 THE COURT: Okay. Did you say D698?

18 MR. C. MATTHEW RITTGERS: That's correct.

19 THE COURT: Do I have it?

20 MR. C. MATTHEW RITTGERS: It is not -- that's in the
21 cross folders. It is not part of -- it is added on to our
22 exhibits, I believe.

23 THE COURT: Okay. Was it supplied to me or not?

24 MR. C. MATTHEW RITTGERS: Oh, Your Honor, I'm sorry.
25 May I approach?

FLYNN - CROSS

1 THE COURT: You may.

2 MR. C. MATTHEW RITTGERS: Sorry about that.

3 THE COURT: No worries. Go ahead.

4 Q. Mr. Flynn, this would be an example of a reputable
5 developer reaching out to you, another council member, and
6 also someone in the city economic development department to
7 start a process off, right?

8 A. Yes.

9 Q. And this is a guy who knew the process. He was not --

10 A. Well, and, again, I've known Dan Schimberg for 30 years.
11 You know, I think at this point, it was more of a conceptual
12 idea.

13 Q. Sure.

14 A. But yeah. He reached -- obviously reached out to me to
15 discuss it.

16 Q. And that was you and someone at the city economic
17 development department, not the city manager's office, right?

18 A. Right.

19 Q. And so that was just a preliminary discussion about his
20 thoughts about an upcoming project that he might some day have
21 in front of city council, and he asked if you wanted to meet,
22 correct?

23 A. Yes.

24 Q. And that would not be atypical?

25 A. No.

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1 Q. And it's permitted and ethical and fine to meet?

2 A. Yes.

3 Q. When you served on council between 2013 and 2017, there
4 were certain things that were important to you when you were
5 on council, right?

6 A. Yes.

7 Q. And when you got off council in 2017, there was some
8 unfinished business that you had that you passed on to P.G.
9 Do you remember that? And I can show you the --

10 A. Are we talking --

11 Q. This would be the wheelchair accessible taxicabs.

12 A. Yes.

13 Q. And so in 2017 -- and that's because you knew P.G. would
14 help get this passed?

15 A. P.G. offered, yes. The reason that it was still
16 lingering was the State of Ohio did not allow for wheelchair
17 accessible taxis, so we had to change the state law. By the
18 time we got the state law changed, I was off council.

19 Q. And it wasn't for, I think, seven months before it
20 ultimately passed, right?

21 A. I believe that's correct.

22 Q. But you passed that responsibility on to P.G. to sponsor
23 when you were off council, and he was one of nine council
24 members, right?

25 A. Well, I think P.G. offered to do that, yes.

1 Q. But you didn't have to pass it to -- you could have had
2 anybody help you with that legislation, correct?

3 A. I would assume anybody would, yes.

4 Q. Okay. And he worked with you when you are a citizen, off
5 council, to make sure that this ultimately was passed?

6 A. Yes. Although not in the form that I wanted it to, it
7 passed.

8 Q. Do you blame P.G. for that form?

9 A. I don't blame him for that. I would just say that, you
10 know, the legislation got changed, in my opinion, not for the
11 better.

12 Q. Okay. But that was not P.G.'s fault, the legislation
13 being changed?

14 A. I don't know that.

15 Q. He and his staff would work with you during that
16 seven-month period on this particular legislation, as needed,
17 to try to help sponsor this and get it passed, right?

18 A. Or, for example, the funding for assisting in the
19 creation of wheelchair accessible vans, taxi vans, the funding
20 in the city level for that came out of my office budget when I
21 did not replace a staff member for two years. And so we voted
22 to put that money into a trust fund to assist with that.

23 The support was supposed to be limited and, basically,
24 when the legislation went through, the support was more than
25 doubled and allowed for fewer vehicles to be on the road.

1 Q. And this is funding we're talking about that the city had
2 to get from the state?

3 A. No. This is money that the city already had in its
4 coffers, because I had legacied that money in out of my office
5 budget.

6 MR. C. MATTHEW RITTGERS: All right. May I have one
7 moment, Your Honor?

8 THE COURT: You may, Mr. Rittgers.

9 Q. Mr. Flynn, the city solicitor's office, the law
10 department, there is a city solicitor, correct?

11 A. Yes.

12 Q. And the city solicitor is the person who would give
13 advice to council members about what they can and cannot do in
14 their capacity as council members?

15 A. That's one of the things that, if you ask them, they
16 would do, yes.

17 Q. And the mayor would go to them for advice as well, right?

18 A. I would assume so.

19 Q. In 2021, there was a memo related to the structure, some
20 of the things we just talked about, based on the city charter
21 that the city solicitor and city manager wrote, correct?

22 A. I'm not sure what you're talking about, Mr. Rittgers.

23 Q. I'm referring to an op-ed that you wrote where you
24 disagreed with the way in which the solicitor and the manager
25 interpreted our charter for how the structure of government

FLYNN - CROSS

1 is?

2 A. Yes.

3 Q. And was that discussed when you met with the prosecutors
4 in preparation for this case? Is that how they came to
5 contact you?

6 A. That was not discussed.

7 Q. That memo that was written -- and you know what I'm
8 referring to now. It was written by city manager Paula Boggs
9 Muething and city solicitor Andrew Garth, correct?

10 A. Correct.

11 Q. And they wrote that memo, and you wrote a public response
12 to it, where these people who actually do tell council members
13 and the mayor what that structure should be, you disagreed
14 with that structure, right?

15 A. I don't disagree with the structure. I disagreed with
16 their characterization that the -- I believe their opinion was
17 that the mayor was the CEO.

18 Q. You strongly disagreed with their analysis in their
19 memorandum as it relates to the power that is vested within
20 the city governmental structure?

21 A. I'm not sure what that question --

22 MR. C. MATTHEW RITTGERS: May I approach, Your Honor,
23 just briefly?

24 THE COURT: You may.

25 Q. This has been marked as D699. And so, Mr. Flynn, D699 is

1 the op-ed that you wrote on February 12th of 2021?

2 A. Yes.

3 Q. You said you have tremendous respect for Mayor John
4 Cranley, in the first paragraph?

5 A. Yes.

6 Q. And you also have great respect for sitting manager Paula
7 Boggs Muething, and the city solicitor Andrew Garth?

8 A. Yes.

9 Q. Paula Boggs Muething -- sorry, Andrew Garth, who is the
10 solicitor, it would be Andrew Garth's role to tell council and
11 the mayor where the power structure lies in things like that
12 chart, correct?

13 A. Depending on who the -- this is one of the problems that
14 the city solicitor's office has is that sometimes they're
15 requested or required to represent different interests in the
16 city, so the --

17 As I explained earlier on direct, they represent the
18 city, but they also represent the mayor, and they also
19 represent council. Sometimes they represent individual
20 council members. They also represent the departments.

21 And so depending on who asked for that memo, as you know
22 as a lawyer, you write for your client.

23 And so if the law department was writing that memo at the
24 request of the mayor, then they're going to be trying to write
25 persuasively in favor of a position that their client, the

1 mayor, wanted put forth.

2 Q. The point being is that the memo was written. They said
3 this is where the power rests in our governmental structure.
4 "They" being the city solicitor's office, which tells council
5 members and the mayor how they can act, what they can
6 ethically do, and you disagreed with that memo, correct?

7 A. I disagreed with that memo; but, again, I don't think
8 that memo was telling city council how they could act.

9 Q. Well, you say here that the mayor has a role, city
10 council has a role, city manager, through the department of
11 economic development, has the primary role in economic
12 development transactions occurring in our city?

13 A. Yes.

14 Q. And you reference council throughout this in your
15 disagreement with how this memorandum was written?

16 A. No. My disagreement was that they said that the mayor
17 was the CEO of the city, and it's clearly not. The plain
18 words of the charter indicate that, in fact, the city manager
19 is the CEO, the administrative code, and is res- -- and the
20 city manager is responsible for those departments that report
21 through him.

22 The administrative code provides that the department of
23 community and economic development reports to the city
24 manager.

25 Q. And that was the disagreement, what you just described,

1 between the city solicitor and you and your end, right?

2 A. Yes.

3 Q. And are you familiar with 435 Elm? Are you familiar with
4 the project 435 Elm?

5 A. I know where it is, yes.

6 Q. Do you remember it being a problem back when you were on
7 council?

8 MS. GAFFNEY PAINTER: Your Honor, I object. This is
9 well beyond the scope of direct.

10 THE COURT: It is well beyond the scope of direct.
11 You can recall him in your case, I guess, if you want to
12 elicit this testimony.

13 MR. C. MATTHEW RITTGERS: I have no further
14 questions, Your Honor.

15 MS. GAFFNEY PAINTER: No redirect. Thank you, Your
16 Honor.

17 THE COURT: Very good. Mr. Flynn, you're free to
18 leave. Thank you for appearing today, sir.

19 THE WITNESS: Thank you, Your Honor.

20 (Witness excused.)

21 THE COURT: Does the government intend to call
22 another witness?

23 MR. SINGER: Yes, Your Honor. The government calls
24 Phil Denning.

25 THE COURT: Very good.

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1 (Government witness, PHIL DENNING, sworn.)

2 MR. SINGER: May I proceed, Your Honor?

3 THE COURT: You may.

4 DIRECT EXAMINATION

5 BY MR. SINGER:

6 Q. Good afternoon.

7 A. Good afternoon.

8 Q. Can you please state your name and spell it for the jury,
9 please.

10 A. Yes. My name is Philip Denning, P-h-i-l-i-p,
11 D-e-n-n-i-n-g.

12 Q. Mr. Denning, where do you work?

13 A. Where do I work now?

14 Q. Yeah.

15 A. I work for the Port of Greater Cincinnati Development
16 Authority.

17 Q. What is the Port of Greater Cincinnati Development
18 Authority?

19 A. The port is a quasi-public economic development agency
20 which focuses on redevelopment of blighted property, the
21 creation of jobs and, specifically, industrial jobs in
22 Hamilton County.

23 Q. Is it generally called the port?

24 A. The port, yes.

25 Q. So if I call it "the port," you understand what I'm

DENNING - DIRECT

1 talking about?

2 A. Yes.

3 Q. And what is your role with the port?

4 A. I'm an executive vice president, and I focus most of my
5 time on neighborhoods and neighborhood development.

6 Q. Can you describe what you do as an executive vice
7 president with the port?

8 A. Certainly. The -- one of the oddities of the port is
9 that we have a few entities.

10 For example, one of the managed entities that we take
11 care of is the Hamilton County Land Bank which you may have
12 heard about, and it focuses on blighted and vacant properties.

13 And, in addition to management of the land bank, I focus
14 on -- I manage a team of 10 or 15 staff that focus on
15 commercial development and residential development, new
16 construction, and affordable housing.

17 Q. Can you just describe what the land bank does?

18 A. Yes. The land bank is a separate entity created by the
19 State of Ohio that has its own board. And the land bank's
20 role, really, is to take abandoned property and move it back
21 to productive use and find new investment for it.

22 Q. Prior to working with the port, where did you work?

23 A. I worked for the City of Cincinnati, and specifically the
24 department of community and economic development.

25 Q. What did you do with the community and economic

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1 development department?

2 A. My most recent role there was the director of the
3 department. But I was in a number of varying roles over my
4 five or six years at the City of Cincinnati.

5 Q. And is that department generally called the economic and
6 development department?

7 A. Yes. And you may hear it short-handed to DCED.

8 Q. Thank you. And what does the economic development
9 department do?

10 A. The department of community and economic development has
11 a role that is, in a lot of ways, similar to the port, focused
12 on economic development, job creation, attracting private
13 investment. There are a number of neighborhoods and places
14 inside our county or city that don't experience growth or
15 investment, and so it's to change that.

16 Q. And how does it attempt to change that?

17 A. The City of Cincinnati has a variety of tools focused on
18 real estate and job creation, job creation, tax credits, real
19 estate development incentives like tax abatements or tax
20 increment financing, and so using those tools and a few
21 others, essentially attracting investment to the city.

22 Q. Okay. Before we get into those, can you kind of walk us
23 through your employment history with the economic development
24 department?

25 A. Yes. I first started with the city -- I'm not going to

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1 remember the year, off the top of my head, 2014 or 2015, and I
2 was an economic development associate, or senior economic
3 development officer, and my job was focused on brokering deals
4 in new investment on a smaller level.

5 After a year or so, there had been a fair bit of turnover
6 inside the department, and I was asked to lead a new group
7 called the major projects division, so I accepted that role.

8 And the major projects division was new to the city's
9 structure, and it focused on major projects and, specifically,
10 in downtown, Pendleton, and Over-the-Rhine. There was so much
11 investment happening, and challenges in some of those
12 neighborhoods that, you know, needed a new division. So I
13 took that position, major projects division manager.

14 Then after a year or so in that position, the director
15 position became available, and I was asked by the then manager
16 to continue leading the entire department.

17 Q. And can you describe what your role was as the director
18 of the economic development department?

19 A. Yes. Fairly high number of items that were touching the
20 department; tax abatements for smaller buildings that are
21 being developed, tax increment financing, larger development
22 incentives for bigger projects, like the MLK exchange
23 development project.

24 The department of community and economic development also
25 managed the city's parking assets, so all of the on-street

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1 meters, city-owned parking garages.

2 And then lastly, the City of Cincinnati is an entitlement
3 community, as designated by the federal government, which
4 means that the Department of Housing and Urban Development,
5 HUD, assigns CDBG funds annually to the city, in the
6 neighborhood of 16 or 17 million dollars, and the allocation
7 of those funds and their compliance is also managed by the
8 department.

9 Q. The 16 or 17 million dollars that you referenced from the
10 federal government, does that include the years 2018 and 2019?

11 A. Yes.

12 Q. And what year did you take on that role as the director
13 of economic development?

14 A. That would have been at the end of 2017, and the
15 beginning of 2018 was when I became interim in that position,
16 and was finally full-time director in early 2018.

17 Q. And how long did you remain in that role?

18 A. About two years.

19 Q. And what position did you take when you left as the
20 director of economic development?

21 A. My current position, as I stated, now is executive vice
22 president at the port.

23 Q. Okay. So you left the economic development department
24 job and went straight to the port; is that correct?

25 A. That's correct.

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1 Q. During the time that you worked with the economic
2 development department, did a developer ever seek what's
3 called a development agreement with the city for a project?

4 A. Yes.

5 Q. Can you describe what a development agreement is?

6 A. Certainly. A development agreement is a longer contract
7 between a developer and the city for a smaller project that
8 would renovate a smaller building, something like a tax
9 abatement would suffice.

10 A development agreement is typically a more -- reserved
11 for a more complex transaction, and it states what the city is
12 going to provide to -- as an incentive for a project, and then
13 obligates the developer or business to provide something
14 typically in return.

15 So if the city is selling land to a developer, or giving
16 tax abatements, that would be described with some specificity.
17 And then if the city expected in return, they'll get a certain
18 number of jobs, or they'll get a certain type of investment,
19 development investment or job creation outcome, that would be
20 specified, and there's obligations on both parties.

21 Q. Can you describe how a development agreement moves its
22 way through the city?

23 A. Yes. It is a fairly -- it can be a fairly lengthy path.
24 The majority of that time is inside -- just inside the
25 administration.

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1 There is a project or a business that wants to invest or
2 grow inside the city, and they'd reach out to the development
3 department, typically a staff person that manages one
4 particular neighborhood and the affairs of that neighborhood.

5 And the first step after understanding what a developer
6 is interested in, they would submit an application. And that
7 application asks for quite a lot of information detailing what
8 the project is, what the expected investment will be, and how
9 many jobs will be created, and what the wages of those jobs
10 are.

11 And so there's a fair bit of negotiation back and forth,
12 information gathering from between the staff person and a
13 developer or a business.

14 Ultimately, once all the criteria has been met, that
15 development agreement process travels up to a division
16 manager, where some more questions are asked and vetting is
17 done. And then up to a deputy division manager or a deputy
18 director, and then, ultimately, to the director for decision,
19 confirmation, other information, and then travels to -- from
20 the director to the city manager as -- once that is -- if it
21 is going to be recommended for incentive or for passage.

22 Q. You mentioned details of the project that the developer
23 provides.

24 What does the staff, and then broadly as it moves through
25 the department, what types of information is economic

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1 development looking for from the development agreement
2 applications?

3 A. The staff person really -- you know, everyone up to the
4 director is looking for surety that, in exchange for a public
5 benefit, you know, limited public dollars, public tax dollars,
6 that the public is going to get something in return.

7 And so as part of that process, staff spend their time
8 making sure that if the developer, in this case a developer,
9 or it could be a business investment too, but the developer is
10 saying they want a tax abatement for a project, does the
11 developer have site control? Do they actually own the site
12 that they're talking about? Do they have sufficient financing
13 to complete the project? Not just, you know, I've got a
14 letter from a bank that says I'm interested but, you know,
15 with approval terms, you know, yes, you are approved for this
16 amount.

17 And then, certainly, does the developer or business have
18 the, you know, demonstrated capacity to complete the project.

19 The last thing that the public wants to do is incentivize
20 a project that can't ultimately get completed for one of those
21 reasons or for others.

22 Q. You mentioned financing. What level of specificity is
23 the economic development department looking for in terms of
24 financing when it assesses a development agreement?

25 A. The department would typically ask for a number of

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1 financial models from a proposing developer, a pro forma
2 demonstrating sources and uses of the development project, a
3 capital stack demonstrating every one of these sources of
4 capital that the developer has or will have in order to
5 finance the construction of the project, a 10-year financial
6 pro forma that shows, on a 10-year projection, how well the
7 project is going to cash flow.

8 And that's -- part of the negotiation is for every -- for
9 the most part, every incentive that the city is offering, you
10 know, it was a but for agreement; that is to say, but for the
11 investment of the public, would this project not happen, and
12 so looking at that pro forma to understand does this project
13 really actually need a tax abatement in order to commence
14 construction.

15 Q. I think you also mentioned capacity, capacity of the
16 developer. Is that what you meant by that?

17 A. Yes. Yes. If the developer has -- you know, if they've
18 completed one small residential development, or one house, but
19 are then planning to -- proposing to develop a much larger
20 development, you know, that can be cause for concern about
21 does the developer have the capacity to complete.

22 Q. Ultimately, all the factors you just described, is there
23 one sort of underlying goal or analysis that you're looking
24 for in the economic development department to determine
25 whether or not a particular development agreement is

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1 appropriate?

2 A. Actually, I've never -- I think --

3 Q. Can I ask it another way?

4 A. Yes.

5 Q. Is there an assessment as to whether or not the
6 development agreement will ultimately be a good decision for
7 the public?

8 A. Yes. That's probably -- a fair answer is that,
9 ultimately, if the public is making investments or spending
10 public funds, is what the public is getting in return worthy
11 of that investment, and will it result in -- with certainty in
12 the project happening, the jobs being created.

13 Q. All right. So what happens to a development after it
14 works its way through the economic development department,
15 what happens next?

16 A. Once the department of community and economic development
17 has vetted a project and has come to terms with the developer,
18 there's a development agreement drafted.

19 That agreement is sent -- presented to the city manager,
20 considered by the city manager, and then at the discretion of
21 the city manager, forwarded to city council for consideration.

22 Q. And when the development agreement makes its way to city
23 council, what does city council do?

24 A. This may be different now than it was when I was at the
25 city; but, typically, it would be referred to -- that item

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1 would be referred to a committee, and so it would go to a city
2 council -- bigger city council meeting, it would be referred
3 to one of the committees.

4 And the following week, something like the budget and
5 finance committee would consider that item, and ask questions
6 or discuss that item amongst themselves.

7 Q. And during the time you were at the economic development
8 department, what was city council's role when a developer was
9 seeking the development agreement through the economic
10 development department?

11 A. Typically at, for example, those budget and finance
12 committee meetings, city council people would ask questions of
13 the department about underwriting, or project need, or the
14 number of jobs being created or, you know, which neighborhood
15 a project is in.

16 And if the developer was present at the council meeting,
17 the council could ask -- avail the same questions of the
18 developer.

19 Q. Great. All right. During the time you were with the
20 economic development department, do you recall whether a
21 developer ever sought to develop property located at 435 Elm
22 Street in downtown Cincinnati?

23 A. Yes.

24 Q. And do you recall who the developer was who was seeking
25 development of that property?

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1 A. Yes. It was Mr. Chinedum Ndukwe.

2 Q. Okay. Can you describe the property located at 435 Elm
3 Street?

4 A. 435, the property at the intersection of Elm and Sixth
5 Street is, I would say, a three-story retail building, with a
6 four-story office above a portion of it.

7 At my time in the city, it was in fairly severe
8 disrepair. It was owned by the City of Cincinnati.

9 MR. SINGER: I'd like to show, for identification
10 purposes, USA Exhibit 2A. It's on the monitor right now.

11 THE WITNESS: I don't see anything on my monitor.

12 THE COURT: His monitor is not displaying. Scott,
13 are you turning it on?

14 MR. SINGER: Can we just scroll through those
15 photographs, 435 Elm Street.

16 Q. Do you recognize the images marked for identification
17 purposes as USA Exhibit 2A?

18 A. Yes.

19 Q. And what is it? What are these photos of?

20 A. These are photos of the 435 Elm property.

21 Q. And how is it that you recognize these photographs as
22 that?

23 A. I have -- I've been in the building. And in my time at
24 the city, recognize them from that time.

25 Q. Are these true and accurate photographs of the property

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1 located at 435 Elm Street during the time that you were at the
2 economic development department?

3 A. Yes.

4 MR. SINGER: Your Honor, the government moves USA 2A
5 into evidence.

6 THE COURT: Mr. Rittgers?

7 MR. C. MATTHEW RITTGERS: No objection, Your Honor.

8 THE COURT: USA 2A is admitted without objection.
9 Just for the record, it's a six-page document.

10 MR. SINGER: Permission to publish to the jury, Your
11 Honor?

12 THE COURT: You may, Mr. Singer.

13 Q. Can we start at page 1. Can you just describe what we're
14 looking at here?

15 A. Yes. This is the front door to the retail portion and
16 the entrance lobby of the building at 435 Elm.

17 Q. Page 2. What are we looking at here?

18 A. This is the same building. It's an overall shot, shot
19 from the east.

20 Q. Okay. Next picture. And what is this a photograph of?

21 A. This is the same building, with the addition of the
22 public skywalk that connects across the top over the street.

23 Q. Do you see the 435 in the bottom left-hand corner there?

24 A. Yes.

25 Q. Is that the address of the building?

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1 A. Yes.

2 Q. Next picture. What are we looking at here?

3 A. Same property, just zoomed in on the retail storefronts.

4 Q. Okay. Next picture. And here?

5 A. Same property from the north.

6 Q. Last one. What are we looking at?

7 A. 435 Elm.

8 Q. Thank you. Did Mr. Ndukwe have any interaction with the
9 economic development department related to 435 Elm Street?

10 A. Yes. Yes.

11 Q. Can you describe that, please?

12 A. Mr. Ndukwe was interested in developing the building, or
13 the site.

14 Q. Was your understanding, based on the information that
15 you'd received from Mr. Ndukwe, that he had a property
16 interest in the property at 435 Elm Street?

17 A. No.

18 Q. Okay. Can you describe that?

19 A. Yes. And I'll be a little careful, because this is
20 currently in litigation between the port and Mr. Ndukwe.

21 But at the time of his interest in developing the
22 property, my recollection is that he did not have sufficient
23 interest in the property to be a -- have a developable
24 interest in the property.

25 Q. What was Mr. Ndukwe seeking from the economic

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1 development -- or from the City of Cincinnati with regard to
2 435 Elm Street?

3 A. Mr. Ndukwe was seeking site control, the ownership of the
4 site.

5 Q. And do you recall when Mr. Ndukwe first started pursuing
6 an agreement with the city relating to 435 Elm Street?

7 A. Yes.

8 Q. And when was that?

9 A. The date, I'm not going to remember, but Mr. Ndukwe sent
10 a letter to the department specifically stating his interest
11 in entering into an MOU, or a memorandum of understanding,
12 with the department to redevelop the property.

13 Q. If I showed you that letter, would it refresh your
14 recollection as to the date of when the letter was sent?

15 A. Yes.

16 MR. SINGER: Your Honor, may I approach?

17 THE COURT: You may.

18 Q. Can you review that?

19 A. Yes. So this is July 7, 2017.

20 MR. SINGER: May I approach, Your Honor?

21 THE COURT: You may.

22 Q. So did this refresh your recollection?

23 A. Yes. Thank you.

24 Q. Okay. When was that again?

25 A. That was July 7th, 2017.

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1 Q. Thank you. You mentioned a memorandum of understanding.
2 What is a memorandum of understanding?

3 A. A memorandum of understanding, generally, is a
4 non-binding legal document with, essentially, promises about
5 something to be done.

6 Q. And in your experience, does the city typically enter
7 into a memorandum of understanding relating to large scale
8 development projects?

9 A. Not typically, no. That is a non-traditional path.

10 Q. And during the time you were at the economic development
11 department, did there come a time when Mr. Ndukwe was seeking
12 a development agreement with the city?

13 A. My understanding is that he was seeking a development
14 agreement, but that did not happen.

15 Q. Can you describe that?

16 A. Yes. As I mentioned earlier, the typical process at the
17 time was for staff within the department to enter into
18 negotiations, conversations with an interested developer and,
19 essentially, fulfill all of the information needs they were
20 going to need to make and present to their superiors to make a
21 decision about when to sell or enter into a development
22 agreement, or something of that nature.

23 And staff within the department simply never reached the
24 point at which they were comfortable and had enough
25 information to recommend that a development agreement would be

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1 their next course of action.

2 Q. Can you describe whether there were issues relating to
3 the 435 property, generally?

4 A. The property condition itself?

5 Q. Yes.

6 A. Yes. The property was in disrepair. The roof was
7 leaking. There were active tenants in the building who had,
8 you know, various issues with the property. Parts of the
9 building were failing. You know, the freight elevators were
10 failing, and the cables were rusting, and kind of a whole
11 number of issues related to the lack of upkeep and maintenance
12 over the 20 or 25 years prior by the then occupant, tenant.

13 Q. Were there any other issues with the property that made
14 entering a development agreement with any developer difficult?

15 A. Yes. In addition to those issues, kind of the condition
16 issues that I mentioned, the footprint of the building and the
17 design, the layout of the building was outdated and, all
18 together, it typically called for something like a demolition,
19 which is expensive and creates another financial hurdle to
20 development.

21 Q. What ultimately happened with the 435 Elm Street property
22 during the time you were with the economic development
23 department?

24 A. So ultimately, because of the condition issues, it was
25 a -- quite a large liability that was borne by my department

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1 at the time to maintain and upkeep.

2 And in addition to being the subject of litigation
3 between previous tenants and city attorneys, it was kind of an
4 unfunded mandate.

5 The department didn't get budgeted dollars to take care
6 of a failing facility like this, and so it was a drain on very
7 limited resources within the department, and so, ultimately,
8 the property was sold to the port to maintain and hold on to
9 find the -- patiently find the right development partner or
10 entity.

11 Q. And can you describe how that happened, the transfer to
12 the port?

13 A. That was a property sale agreement, and that process
14 would have happened around budget time, again, because it was
15 kind of a two-pronged approach. It was both a budgetary item
16 but also a capacity item, so it happened around the time of
17 the city budget in June.

18 And at that time, city council -- an item was presented
19 to city council for consideration to sell the property,
20 transfer the property, that is, from the city to the port for
21 one dollar, and after which the port would be responsible for
22 its maintenance, liability, and conditions.

23 Q. Do you recall presenting before the budget and finance
24 committee relating to the transfer of the property from the
25 city to port?

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1 A. I don't have specific recollection of that but, yes, I'm
2 sure that I presented during a budget finance committee
3 hearing of some sort during that time.

4 MR. SINGER: Your Honor, we have a stipulation
5 relating to the admissibility of a video.

6 THE COURT: Yes.

7 MR. SINGER: Would you like me to read that
8 stipulation or present it to you?

9 THE COURT: Yes, could you present it to me. Let me
10 just take a look at it. Is this one that I already have?

11 MR. SINGER: You do.

12 THE COURT: Oh, I can pull it up from here, then.
13 Okay. You can read it or I can, either way, Mr. Singer.

14 MR. SINGER: Would you like me to read it, Your
15 Honor?

16 THE COURT: You can.

17 MR. SINGER: "The parties stipulate to the
18 admissibility of the 1:20 video of Phil Denning's statement
19 before the City of Cincinnati Budget and Finance Committee on
20 June 24th, 2019.

21 "It is further stipulated and agreed that this
22 stipulation may be introduced into evidence as an exhibit, and
23 the facts herein stipulated have the same status, dignity, and
24 effect as the undisputed testimony of a credible witness."

25 THE COURT: Thank you, Mr. Singer.

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1 Ladies and gentlemen of the jury, I mentioned at the
2 outset, there may be some facts that are stipulated to. With
3 regard to stipulated facts, you are to accept those stipulated
4 facts as true and proven.

5 MR. SINGER: Your Honor, permission to publish USA 2I
6 to the jury? 2I is the video that reflects the stipulation.

7 THE COURT: Mr. Rittgers, any objection?

8 MR. C. MATTHEW RITTGERS: No, Your Honor.

9 THE COURT: Very good.

10 (Video played.)

11 Q. Do you recall that testimony?

12 A. Yes.

13 Q. There was a reference to Convention Place Mall. What is
14 that a reference to?

15 A. Convention Place Mall is the second name, I guess, for
16 435 Elm. The complex itself is known as Convention Place
17 Mall.

18 Q. And we just heard it in the recording, but can you
19 describe why it is you recommended the sale of 435 Elm Street
20 for a dollar?

21 A. Yes. Just as I said, it was a liability for the
22 department financially and also legally. And I had forgotten,
23 until I heard that, that because of the large amount of back
24 taxes that the building owed, was delinquent on, it's likely
25 that the port or the land bank would have been involved in a

1 successful redevelopment in any case.

2 Q. And did city council ultimately vote to sell the
3 435 Elm Street property to the port?

4 A. Yes.

5 Q. And were you present during that meeting?

6 A. Yes.

7 Q. Do you recall the date the property was voted on by city
8 council?

9 A. I do not recall.

10 Q. Okay. Do you remember what the city council vote was?

11 A. I recall it was a yes but, other than that, the vote
12 breakdown, I honestly don't recall.

13 Q. Would the minutes of City Hall on the date that the sale
14 was made, would that refresh your recollection?

15 A. Yes.

16 MR. SINGER: Permission to approach, Your Honor?

17 THE COURT: You may.

18 Q. Can you reference page 1 and page 18, the tab right
19 there?

20 A. Yes. Okay.

21 MR. SINGER: May I approach?

22 THE COURT: You may.

23 Q. Did this refresh your recollection as to the date that
24 city council voted on the transfer?

25 A. Yes. And the votes were yes.

DENNING - DIRECT

1 Q. Do you recall what the date was?

2 A. I didn't actually look at the date. I'm sorry. I was
3 looking at the number.

4 Q. Can you tell me what the votes were?

5 A. The votes were all yes.

6 Q. Okay. Do you know Mr. P.G. Sittenfeld?

7 A. Voted yes.

8 MR. SINGER: May I approach?

9 THE COURT: You may.

10 A. I apologize. I haven't been following the assignment.
11 Thank you. So June 26th. Thank you.

12 Q. June 26th of what year?

13 A. Of 2019.

14 Q. Thank you. So I think you just testified that the
15 property was ultimately sold to the port for a dollar; is that
16 correct?

17 A. Yes.

18 Q. Do you recall whether this was the same term that
19 Mr. Ndukwe was seeking with the city in his discussions with
20 the economic development department?

21 A. I do not recall specific terms, actually, of Mr. Ndukwe's
22 as it pertains to the cost or amount of a sale.

23 Q. Okay. And what was the impact of the sale of the
24 property to the port?

25 A. The immediate impact on the city was the removal of a

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1 large financial burden, and so that's a significant public
2 benefit.

3 And then since that time, it has been at the port,
4 managed by the port. The tenants were cleared, and it is
5 being kind of prepped for development.

6 Q. At some point after the transfer, did you change jobs
7 from economic development to the port?

8 A. Yes. So it was about five months after this was sold
9 that the idea was first approached of me from Laura Brunner,
10 the CEO of the port, and it was after that, in January of
11 2020, that I started at the port.

12 Q. Okay. After the property was transferred to the port,
13 was there a possibility that it could return back to city
14 council for any reason?

15 A. It would be unlikely for the property itself to transfer
16 it back to the city for any reason, although with the
17 development project, there might be something else that city
18 council would have had to -- a development incentive, for
19 example, would have had to be considered by city council.

20 Q. That's what I was getting at. Is there some issue
21 relating to the project that could ultimately bring the
22 essence of that issue back to city council?

23 A. Yes. Yes. Ultimately, if the project's found a
24 development proposal that was real and vetted, that if the
25 developer were needed -- were going to need a development

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1 incentive like a tax abatement, or something like that, then
2 that item would come back to -- in front of city council
3 related to this property.

4 Q. Was Mr. Ndukwe ultimately able to negotiate a development
5 agreement with the port related to the property?

6 A. No.

7 Q. During the time you were with economic development, do
8 you recall any discussions you had with then Councilman
9 P.G. Sittenfeld regarding the 435 Elm Street project?

10 A. Yes.

11 Q. Can you describe what you recall of those conversations?

12 A. I recall one or two phone conversations with
13 Mr. Sittenfeld that were primarily focused on process for the
14 building, the building's development option.

15 Q. Any specifics about the conversation that you recall?

16 A. It was -- again, it was mainly focused on process and,
17 you know, what is going to -- you know, what are the
18 department's next steps.

19 For context, you know, in my time at the department, I
20 had instituted an RFP process, request for proposals process,
21 to elicit competitive bids for properties. And we had
22 instituted that and had been using it, and so most of the
23 conversations with Mr. Sittenfeld, I believe, was about that.

24 Q. Do you recall any discussion related to Mr. Ndukwe's
25 interest in the property?

DENNING - DIRECT

1 A. Yes. Vaguely. My recollection was Mr. Sittenfeld
2 asking, again, about process, and what is the process for
3 Mr. Ndukwe to get control of the property or develop the
4 property.

5 Q. Now, I think you testified that Mr. Ndukwe had some
6 interest in the property; is that correct?

7 A. I wouldn't --

8 Q. Can I ask a different question?

9 A. Yes.

10 Q. How would you describe Mr. Ndukwe's interest in the
11 property?

12 A. At the time, I'm going to have to say I don't recall
13 exactly when he -- Mr. Ndukwe, that is -- had purchased a
14 mortgage cure.

15 But without getting too technical, one of the tenants in
16 the building had defaulted on a mortgage. The mortgage holder
17 had a right to cure that default. And my understanding was
18 that Mr. Ndukwe had purchased that right to cure the default.

19 And so this topic is, again, subject of litigation today
20 between Mr. Ndukwe and the port, but the interest is -- I
21 don't believe there is an interest.

22 Q. So with that backstop, during the time you were with
23 economic development, was it your perspective that
24 Mr. Ndukwe was going to be the developer of the project based
25 on the relationship he had with 435 Elm Street?

DENNING - DIRECT

1 A. For clarity, this is at my time at the port?

2 Q. During your time in economic development.

3 A. Oh, in economic development. Yes. My understanding was
4 Mr. Ndukwe had not demonstrated sufficient capacity, finances,
5 or other plans necessary to present a development project to
6 city council.

7 Q. And that was from the perspective of the economic
8 development department; is that correct?

9 A. Yes.

10 MR. SINGER: May I consult?

11 THE COURT: You may.

12 Q. One quick follow-up. You've mentioned a litigation, I
13 believe, relating to the port and Mr. Ndukwe.

14 Does that have anything to do with any criminal charges?
15 Is that a civil matter relating to --

16 A. Yes. My understanding is that is a separate -- that's
17 just a separate matter.

18 Q. A completely separate civil matter?

19 A. Correct.

20 Q. Not related to the reason you're testifying here today?

21 A. Correct. Yes. Yes. Completely separate.

22 MR. SINGER: No further questions.

23 THE COURT: Thank you, Mr. Singer.

24 Mr. Rittgers, your witness.

25 MR. C. MATTHEW RITTGERS: Thank you, Your Honor.

DENNING - CROSS

CROSS-EXAMINATION

BY MR. C. MATTHEW RITTGERS:

Q. Good afternoon, Mr. Denning.

A. Hi, there.

Q. Now that you've seen that video on the floor of council, you're fairly familiar with the recommendation that you made back then?

A. Yes.

Q. And, in part, part of the recommendation was because the city was saddled with that property for quite a long time?

A. Yes.

Q. And it cost the city roughly \$400,000 a year just in maintenance costs, which was draining the budget and finances of the city?

A. That's correct.

Q. It also was a bit of a hazard for the public, even maybe the tenants, because of the condition of the building?

A. Yes, the building, when it was still owned by the City of Cincinnati, had occupants, tenants, tenants and subtenants. And that was a situation which the department wasn't capable or really built to handle.

Q. And that's why, ultimately, you stood on the floor and you recommended to council to transfer the building to the Port Authority?

A. That's correct.

1 Q. And that would be fairly typical, in your role as the
2 economic development director, to speak to council about what
3 your beliefs were regarding a transfer to the port?

4 A. Yes.

5 Q. And those were -- that was your belief. I mean, those
6 were your beliefs based on what your department and you
7 actually knew about the building?

8 A. That's correct. And --

9 Q. And -- sorry. Go ahead. I apologize.

10 A. No, that's okay. Typically, I would appear to council
11 with information that my staff had presented about a project
12 or such, so yeah.

13 Q. And the dollar transfer to the port was, I think your
14 words were it was a steal for the city, right, the transfer?

15 A. Right. Correct. It was relieving a significant public
16 burden.

17 Q. Because it was costing us, the taxpayers, roughly
18 \$4 million every decade?

19 A. Yes.

20 Q. The costs, just because this property was transferred to
21 the port, given the state it's in today, those don't go away.
22 The port still has costs every day with that property,
23 correct?

24 A. Yes.

25 Q. And the port's mission, where you are now, is to help

1 revitalize, I think you mentioned light industrial jobs, even
2 sometimes residential homes?

3 A. Uh-huh.

4 Q. Commercial buildings like 435 Elm, correct?

5 A. Yes.

6 Q. And this particular building at 435 Elm was strategic, in
7 that it was right across the street from our Convention
8 Center?

9 A. Yes. It is directly south of the Convention Center.

10 Q. And I believe at the time, in 2018, to the east of the
11 Convention Center, there stood a hotel called Millennium?

12 A. Yes.

13 Q. Which is gone. Was this property, was it something that
14 would have been helpful for the port, if there was a
15 successful development agreement, to get a hotel on this
16 property because of where it was located?

17 A. Unfortunately, that's a more complicated answer.
18 Certainly, getting the property developed again would be the
19 best, you know, best-case scenario for the western side of
20 downtown, and the size of the property is fairly small. It
21 looks bigger, but it's kind of an L-shaped property, so a
22 hotel is a potential use. It could have been other uses as
23 well.

24 Q. At the port, were you -- I should ask. Were you
25 personally familiar with any studies done regarding our

1 Convention Center with the Convention Bureau, or anything like
2 that?

3 A. Yeah, vaguely. I'm sure that over the past couple of
4 years, I've read, you know, an HVS study, or something about
5 convention -- hotel convention redevelopment.

6 Q. And, in general terms, we -- Cincinnati's Convention
7 Center competes with other convention centers within, you
8 know, a 150-mile radius?

9 A. Yes.

10 Q. Indianapolis, Louisville, Columbus?

11 A. (Nods affirmatively.)

12 Q. And it's important for a Convention Center to have nice
13 and usable hotel space near the Convention Center, right?

14 A. Yes.

15 Q. And it helps with broader tourism for the region?

16 A. Absolutely. With perception, visitors visiting the
17 convention facility, certainly.

18 Q. Tax base, jobs?

19 A. Yes.

20 Q. I know there's very limited things that you can say
21 because you're at the port, and the property is currently in
22 litigation in state court, civil litigation.

23 The port's position, and correct me if I'm wrong, is that
24 Mr. Ndukwe does not possess air rights; is that right?

25 A. Yes.

1 Q. And his position is that he does possess air rights,
2 correct?

3 A. Honestly, I'm uncomfortable speaking to his position.

4 Q. Okay. There's an argument over whether or not he
5 possesses air rights on that property?

6 A. That's my understanding, yes.

7 Q. You mentioned the defunct mortgage. You said that he
8 purchased a mortgage. Was it from U.S. Bank in 2017?

9 A. That's my understanding, yes, it was from U.S. Bank.

10 Q. If today the port's -- if the port had a good proposal,
11 where someone said they had \$75 million to develop that
12 property, would that be a good thing to try to dive into and
13 successfully complete?

14 A. It seems like the answer would be yes, although my answer
15 would probably be a little more vague than that because I
16 would say that you would probably want to talk to 3CDC, who is
17 managing the redevelopment of the Convention Center district.
18 But, generally, attracting more private investment to the
19 corner or the district is beneficial, yes.

20 Q. To help revitalize downtown?

21 A. Yes. Yep.

22 Q. Our county and region?

23 A. (Nods affirmatively.)

24 MR. C. MATTHEW RITTGERS: No further questions, Your
25 Honor.

DENNING - REDIRECT

1 THE COURT: Thank you, Mr. Rittgers.

2 Mr. Singer, any redirect?

3 MR. SINGER: Just two brief questions, Your Honor.

4 THE COURT: Very good.

5 REDIRECT EXAMINATION

6 BY MR. SINGER:

7 Q. I think you testified that it was the determination of
8 economic development that, when you were assessing the
9 property, ultimately, you went and determined whether it was
10 in the public interest; is that right?

11 A. Yes.

12 Q. And despite all the issues relating to the property, was
13 it the assessment of economic development at the time that the
14 development agreement pursued by Mr. Ndukwe was not in the
15 public interest?

16 A. That is a fair assessment.

17 MR. SINGER: No further questions.

18 THE COURT: Thank you, Mr. Singer.

19 Mr. Rittgers, any further questions?

20 MR. C. MATTHEW RITTGERS: May I have one moment, Your
21 Honor?

22 THE COURT: You may.

23 MR. C. MATTHEW RITTGERS: I have no further
24 questions, Your Honor. Thank you.

25 THE COURT: Thank you. Sir, you may step down.

1 Thank you for being here today.

2 THE WITNESS: Thank you.

3 (Witness excused.)

4 THE COURT: Would the government like to take a brief
5 break?

6 MR. SINGER: You read my mind, Your Honor.

7 THE COURT: Okay. I think a brief break may be a
8 good idea. We'll allow the jury to stretch your legs a little
9 bit. We'll try to keep it pretty brief, though.

10 (Jury out at 3:55 p.m.)

11 THE COURT: You may be seated.

12 Is there anything anybody wishes to discuss on the record
13 before we take a break?

14 MR. SINGER: Your Honor, we have a number of
15 stipulations that we will want to read into the record prior
16 to the next witness testifying.

17 THE COURT: Okay. Are they this group of
18 stipulations that you provided to the Court?

19 MR. SINGER: They have been provided to the Court.
20 They relate to financial records -- or, I'm sorry, phone
21 records.

22 THE COURT: So I'm a little confused by the
23 stipulations. So the stipulations don't seem to me to be as
24 to facts. They seem to be stipulations as to the
25 admissibility of exhibits.

1 MR. SINGER: That's correct, Your Honor.

2 THE COURT: I'm a little concerned that if we read it
3 to the jury and tell the jury that the stipulation may be
4 treated as credible and undisputed evidence, that they're
5 going to think that it means the document that's admitted is
6 credible and undisputed evidence, which I'm not sure that -- I
7 mean, the stipulation as to the admissibility of the exhibit
8 doesn't necessarily mean it's a stipulation as to the truth of
9 everything that's stated in the exhibit.

10 MR. SINGER: Your Honor, I think we're comfortable,
11 so long as you're comfortable, with us just publishing it to
12 the jury based on those stipulations moving forward --

13 THE COURT: I would be more comfortable with that,
14 because I felt like reading it to the jury may have confused
15 them with regard to the transcript or the video that we just
16 saw.

17 So if this is just a series of exhibits, I would suggest
18 that, you know, the government can just now, while we're on
19 the record, move for the admission of these exhibits.

20 I'll ask Mr. Rittgers if there's an objection, and if
21 there's not, they will be admitted, and then you can just use
22 them as evidence and publish them to the jury.

23 MR. C. HENRY RITTGERS: Your Honor, are we talking
24 about the summary, the three summary exhibits that you guys
25 intended --

1 MR. SINGER: No. We're talking about the
2 stipulations that we executed relating to bank --

3 MR. C. MATTHEW RITTGERS: Isn't the judge -- I'm
4 sorry. I think the judge is asking about the exhibits on top
5 of that.

6 THE COURT: No, no. I was just asking if these
7 stipulations go to the admissibility of exhibits. Rather than
8 doing a stipulation, why not just move to admit the exhibit to
9 which this stipulation relates, and if there's no objection,
10 I'll admit it and it will be evidence.

11 MR. C. MATTHEW RITTGERS: There might be objections
12 to the exhibits, but these relate to the tapes and the partial
13 parts of the tapes, right?

14 MR. SINGER: These relate to the financial records
15 that we'll be put -- or the phone records that we'll be
16 putting in.

17 THE COURT: Why don't we use an example. Give me one
18 example of what we're talking about, Mr. Singer.

19 MR. SINGER: So we have a stipulation relating to the
20 admissibility of Verizon phone records. It's page 6 of 9.

21 THE COURT: Okay. So read that for the record.

22 MR. SINGER: "The parties stipulate to the
23 admissibility of Verizon phone records produced by the
24 government in discovery for Kingsley Investment Group, phone
25 number 614-753-1491, which was used by Chinedum Ndukwe, and

1 Deborah Coyne, phone number 513-365-2404, which was used by
2 Alexander P.G. Sittenfeld.

3 "It is further stipulated and agreed that this
4 stipulation may be introduced into evidence as an exhibit, and
5 that the facts herein stipulated have the same status,
6 dignity, and effect as to undisputed testimony of credible
7 witnesses."

8 THE COURT: Okay. So did this stipulation relate to
9 a particular exhibit?

10 MR. SINGER: It relates to evidence that -- yes, it
11 does.

12 THE COURT: And what is the label on that particular
13 exhibit?

14 MR. SINGER: USA 6, Your Honor.

15 THE COURT: So as I understand it, the parties have
16 stipulated to the admissibility of USA 6. But let me just ask
17 Mr. Rittgers, do you have any objection to the admission of
18 USA 6?

19 MR. C. MATTHEW RITTGERS: We do not, assuming that
20 that corresponds -- I just haven't checked. I believe them,
21 but no, based on what he said that the exhibit is.

22 THE COURT: Okay. So USA 6 is admitted without
23 objection.

24 Now, my understanding is that a number of the rest of
25 these stipulations are similarly tied to a particular

1 government exhibit as to which the parties have stipulated to
2 admissibility.

3 MR. SINGER: There are, Your Honor. There are
4 certain facts in this particular stipulation that relate to
5 the use of the phone number, which is a fact.

6 THE COURT: Oh, that's right. Okay. So we will need
7 to read that to the jury.

8 MR. SINGER: We can just read that part, and we can
9 just mark this as an exhibit and it will be evidence that goes
10 back with the jury.

11 THE COURT: That's a fair point. The one we did
12 before didn't have that, where there were facts in the
13 stipulation.

14 Are most of these stipulations going to have facts in
15 them that are in addition to the government exhibit? Okay.
16 So then it probably will be better to just read them to the
17 jury, and then explain that they relate to a particular
18 government exhibit.

19 I think we may need to do that.

20 MR. SINGER: Okay.

21 THE COURT: And it's all of these after 15 or 16?
22 Oh, you don't have my book. It's a bunch of, like, "The
23 parties stipulate the audio/video and documents produced by
24 the government in discovery are authentic for purposes of
25 901," or is that not one of them?

1 MR. SINGER: That is one of the entire group. That
2 relates more to whether or not these documents are -- that the
3 materials are authentic, rather than the admissibility for the
4 jury, so I think that one is a little different than the other
5 ones.

6 THE COURT: So here's what I would propose. I will
7 let you read the stipulation, and then I will tell the jury
8 what fact that they should take from that stipulation as being
9 undisputed evidence by stipulation of the parties. So I think
10 I can manage that. Okay.

11 You want to do that when we bring the jury back in,
12 you're saying? Is that a good time?

13 MR. SINGER: Yeah. We can do that.

14 THE COURT: All right. What's the government's plan
15 for the rest of the afternoon?

16 MR. SINGER: Your Honor, we were going to call case
17 agent Special Agent Nathan Holbrook. He is a long witness, a
18 very in-depth witness. From the government's perspective, it
19 makes sense to maybe start with him tomorrow morning.

20 If we could read the stipulations into the record now,
21 and then start with Special Agent Holbrook in the morning.

22 THE COURT: Okay. Mr. Rittgers?

23 MR. C. HENRY RITTGERS: No objection to that.

24 THE COURT: Okay. So it sounds like the parties are
25 in agreement.

1 Can you tell the Court the plan for tomorrow? You just
2 said that Mr. Holbrook will be a relative involved witness.
3 How many witnesses does the government plan on putting on
4 tomorrow?

5 MR. SINGER: It's the government's estimation that
6 he's going to testify the whole day.

7 THE COURT: The whole day?

8 MR. SINGER: Yes.

9 THE COURT: And do you think that would also include
10 cross, or do you anticipate the cross -- and I know that's
11 going to be hard for you. How long do you anticipate the
12 direct going? Let me ask it that way.

13 MR. SINGER: Direct will probably go all day, Your
14 Honor.

15 THE COURT: The direct will go all day?

16 MR. SINGER: Yes.

17 THE COURT: All right. Then I think it probably
18 makes sense -- the one thing I would say is be mindful that I
19 would like to try and take a break for the jury every hour and
20 a half to two hours.

21 So if we start at 9:00 in the morning, try to take a
22 break sometime around 10:30, try to take a break around noon
23 for lunch. I want you to take a break where it makes sense to
24 take a break, but if you can try and plan it out so that every
25 hour and a half or so we can take a break, I think that would

1 be helpful to the jury.

2 MR. SINGER: Will do.

3 MS. GLATFELTER: Your Honor, would you like us to
4 suggest a break to the Court, or should we wait for your --

5 THE COURT: Yes. No, no. Just be mindful of the
6 time. If you're not sufficiently mindful, the Court will
7 suggest it to you. But yeah, I'll try to be -- if you can try
8 to be mindful of time, you know, just generally around 10:30,
9 if we start at 9:00.

10 Is 9:00 a good starting time tomorrow?

11 MR. SINGER: Yes, Your Honor.

12 THE COURT: Is 9:00 a good starting time?

13 MR. C. MATTHEW RITTGERS: What time? I apologize,
14 Judge.

15 THE COURT: Is 9:00 a good starting time tomorrow?

16 MR. C. MATTHEW RITTGERS: Yes, Your Honor.

17 THE COURT: It sounds like the witness is going to
18 take all day, so I would like to try and get him done
19 tomorrow, so we if start by 9:00, which means we should be
20 here by 8:45?

21 MR. C. MATTHEW RITTGERS: 8:45.

22 MR. SINGER: Great.

23 THE COURT: After we take a brief break, we'll bring
24 the jury back in, read the stipulations, and then we'll break
25 for the day.

1 Anything else we need to discuss, Mr. Singer?

2 MR. SINGER: No, Your Honor.

3 THE COURT: Mr. Rittgers?

4 MR. C. HENRY RITTGERS: Maybe after the jury has
5 gone, one issue.

6 THE COURT: Very good.

7 (Brief recess.)

8 THE COURT: Did we discover anything else we need to
9 talk about before we bring the jury out?

10 MR. SINGER: Just relating to the stipulations, Your
11 Honor, unless you think differently, the one that is 2 of 9,
12 page ID 2866, related to authenticity.

13 THE COURT: Right.

14 MR. SINGER: I don't know if that's something that
15 necessarily needs to be read to the jury.

16 THE COURT: So does this relate to specific exhibits?

17 MR. SINGER: It's everything that the government has
18 produced to the defense counsel.

19 THE COURT: Is there any way I can identify it for
20 the record?

21 MR. SINGER: They won't be objecting to it. I can
22 read it.

23 THE COURT: I mean, we don't need to do it to the
24 jury because, once again, I don't want the jury to take from
25 this that the contents of all those things that are stipulated

1 as being undisputed and all that. So we can do that not in
2 the jury's presence, if Mr. Rittgers is comfortable with that.

3 MR. C. MATTHEW RITTGERS: I am, yes, Your Honor.

4 THE COURT: So just for the record, "The parties
5 stipulate that the audio, video, and documents produced by the
6 government in discovery are authentic for purposes of Federal
7 Rule of Evidence 901."

8 And the Court has accepted that stipulation, so all such
9 materials that have been produced by the government shall be
10 deemed authentic for purposes of this trial, all right?

11 And then the rest of them you want to read, Mr. Singer,
12 is that right?

13 MR. SINGER: Yes, Your Honor.

14 THE COURT: Okay. One of them seems to be related to
15 defense exhibits.

16 MR. SINGER: Yes, Your Honor. There's one other one
17 that would fall under this category, I think.

18 MR. C. MATTHEW RITTGERS: Those are photographs, Your
19 Honor. They don't need to be read into the record. I defer
20 to the Court.

21 THE COURT: Okay. So the parties have stipulated to
22 the admissibility of Exhibits D11 up to D18; is that right?

23 MR. C. MATTHEW RITTGERS: That's correct, Your Honor.

24 THE COURT: Mr. Singer is that correct?

25 MR. SINGER: That's correct, Your Honor.

1 THE COURT: So any problem with me introducing into
2 the record now, even though it's the government's case in
3 chief?

4 Do you want me to wait and put them in when it's the
5 defendant's case, or are you fine with them going in now?

6 MR. SINGER: So is the idea that we will read the
7 stipulations, and then the underlying exhibits will be read
8 into the record?

9 THE COURT: No, no, no. I'm now just talking about
10 the one that say Exhibits D11 to D18. Since there are no
11 facts in there that the jury needs to hear, I was just going
12 to admit them for the record in this case, unless you prefer
13 to wait until it's their case in chief.

14 So Defense Exhibits D11 to D18 are admitted into the
15 record in this case.

16 And also, Scott, what was the video we played right
17 before the break?

18 COURTROOM DEPUTY: USA 2I.

19 THE COURT: I think USA 2I was what a previous
20 stipulation related to, and I don't know if I technically said
21 2I was admitted, so just for the record, although it's already
22 been played, Government Exhibit 2I is admitted.

23 Well, I should have asked. I believe there was no
24 objection, is that right, Mr. Rittgers?

25 MR. C. MATTHEW RITTGERS: There was not an objection,

1 Your Honor.

2 THE COURT: Okay. So Government Exhibit 2I is
3 admitted without objection.

4 So I believe that leaves these other stipulations, which
5 is going to be, I believe, pages 3, 4, 5, and 6 and 7 of 9.
6 Is that what you have, Mr. Singer?

7 MR. SINGER: I'm sorry. Can you say that again, Your
8 Honor?

9 THE COURT: Sure. I believe that the ones we still
10 need to address for the jury are labeled at the top as page 3
11 of 9, page 4 of 9, page 5 of 9, page 6 of 9, and page 7 of 9.
12 I believe we've already dealt with page 8 of 9, and I just
13 dealt with page 9 of 9.

14 MR. SINGER: That's correct, Your Honor.

15 THE COURT: And then have we dealt sufficiently with
16 the separate stipulation, which goes to the transcripts, or
17 how are we going to deal with that? That was the issue we
18 discussed this morning about the transcripts.

19 MR. C. MATTHEW RITTGERS: We would propose doing it
20 after the jury's released, and I believe either my father or
21 Neal might be able to have a discussion on that, but it might
22 be more lengthy.

23 THE COURT: Okay. So let's bring the jury in and
24 deal with pages 3 through 7 of 9 of the stipulations.

25 MR. SINGER: So that exhibits that underlie these,

1 that are tied to these stipulations --

2 THE COURT: Do you have them?

3 MR. SINGER: We do, although it's a little -- so for
4 the phone records, we have them. There is a Fifth Third Bank
5 account, and the -- there are portions that are admitted
6 through different witnesses, so that kind of jumps around a
7 little bit.

8 THE COURT: Which stipulation? What page is that at?
9 It's page 5 of 9, I believe; is that right?

10 MR. SINGER: It is 5 of 9, that's correct.

11 THE COURT: Well, what do you mean it jumps around?
12 You're stipulating to the admissibility, so it should be a
13 complete exhibit, even if different witnesses testify about
14 it.

15 MR. SINGER: It is, but we have marked them in
16 various places throughout our exhibit list, so the checks, for
17 example, that came from the grand jury subpoena and relating
18 to the checks in November are one exhibit number, and then the
19 checks introduced from the September checks, for example, are
20 introduced as a different exhibit number.

21 THE COURT: I understand. But there must be a
22 collection of exhibit numbers to which this stipulation are --

23 MR. SINGER: There are. If you could just give us
24 two minutes to kind of make sure we have that full list?

25 THE COURT: Sure. Okay.

1 MR. SINGER: Your Honor, could we do the one
2 stipulation tomorrow?

3 THE COURT: Sure.

4 MR. SINGER: So we don't have to waste everybody's
5 time.

6 THE COURT: That's fine. And as I understand it, the
7 one labeled page 3 of 9 doesn't have an exhibit associated
8 with it?

9 MR. SINGER: That's correct.

10 THE COURT: So then 4 of 9 is probably not going to
11 have an exhibit associated with it either; is that right?

12 MR. SINGER: That's right.

13 THE COURT: And then 5 of 9 is the one we're going to
14 put off until tomorrow?

15 MR. SINGER: Yep.

16 THE COURT: And 6 of 9, the facts are going to relate
17 to the telephone number being assigned to each of those two
18 people?

19 MR. SINGER: Along with USA 6 and USA 7.

20 THE COURT: Thank you. Those are the phone records?

21 MR. SINGER: Yes.

22 THE COURT: Oh, the first phone number was a phone
23 that was used both by Mr. Ndukwe and Ms. Coyne; is that right?

24 MR. SINGER: No. The first phone number is under
25 Kingsley Investment Group, which was used by Chinedum Ndukwe.

1 The second phone --

2 THE COURT: And Ms. Coyne, it looks like.

3 MR. SINGER: Those are two separate --

4 THE COURT: Looks like the second phone number was
5 used by Mr. Sittenfeld, unless I'm reading something off?

6 MR. SINGER: Yes, but it is a phone record that is
7 under the name of Deborah Coyne. The grand jury subpoena --

8 MR. C. MATTHEW RITTGERS: It's the in-law.

9 THE COURT: I see. So there's one that is Kingsley
10 Investment Group, which has a phone number, and that phone was
11 used by Mr. Ndukwe. And the other one is a phone number
12 that's assigned to Ms. Coyne but was used by Mr. Sittenfeld?

13 MR. C. MATTHEW RITTGERS: Correct.

14 THE COURT: Do I understand correctly?

15 MR. C. MATTHEW RITTGERS: Correct, Your Honor.

16 THE COURT: And then page 7 of 9 is going to just be
17 one phone number, and it's going to probably have an
18 associated exhibit; is that right?

19 MR. SINGER: USA 8.

20 THE COURT: USA 8. Okay. And I believe that's done,
21 right?

22 MR. SINGER: That's it, Your Honor.

23 THE COURT: Okay. So we have a plan?

24 MR. SINGER: We have a plan. Thank you.

25 THE COURT: All right. Do we want to bring the jury

1 back in? Okay. Let's bring the jury back in.

2 (Jury in at 4:32 p.m.)

3 THE COURT: Ladies and gentlemen of the jury, while
4 you were out, we took care of a little bookkeeping here, and I
5 think we have a plan for the rest of the afternoon, which is
6 we're going to read some stipulations into the record now.

7 We're not going to have any more witnesses this
8 afternoon, so we're going to get out a little bit early this
9 afternoon, and we'll start tomorrow at 9:00 with another
10 witness in the government's case. But we just want to take
11 care of these stipulations now.

12 As I instructed you at the outset, the facts that are
13 stipulated too, it means that you should accept them as true
14 and proven.

15 The government and/or Mr. Sittenfeld may refer to these
16 stipulations at various points during the trial. If they
17 refer back to a stipulation, you should deem that to be a fact
18 that's been established by credible evidence.

19 So go ahead, Mr. Singer.

20 MR. SINGER: Thank you, Your Honor. "The parties
21 stipulate that the City of Cincinnati received federal funds
22 in excess of \$10,000 under a federal program involving federal
23 assistance during both the 12-month calendar year of 2018 and
24 the 12-month calendar year of 2019.

25 "It is further stipulated and agreed that this

1 stipulation may be introduced into evidence as an exhibit, and
2 that the facts herein stipulated have the same status,
3 dignity, and effect as the undisputed testimony of a credible
4 witness."

5 THE COURT: So let me just stop you there for a
6 second, Mr. Singer, and just explain to the jury that to the
7 extent -- just to use this as an example.

8 To the extent that there is some issue in this trial
9 where it matters whether the City of Cincinnati has received
10 federal benefits in excess of \$10,000 during a 12-month
11 calendar year period, which may be one element, certainly not
12 the only element but may be one element of one of the charges
13 here, you can deem that fact to have been proven at trial. Do
14 you see how that works? Makes sense?

15 Okay. Go ahead, Mr. Singer.

16 MR. SINGER: "The parties stipulate that in calendar
17 years 2018 and 2019, the City of Cincinnati was a local
18 government in the State of Ohio, and Defendant Alexander
19 Sittenfeld was an elected official serving on Cincinnati City
20 Council, and was paid by the City of Cincinnati.

21 "It is further stipulated and agreed that this
22 stipulation may be introduced into evidence as an exhibit, and
23 the facts herein stipulated have the same status, dignity, and
24 effect as the undisputed testimony of credible witnesses."

25 THE COURT: Are you going to go on?

1 MR. SINGER: Yes.

2 THE COURT: 6, right?

3 MR. SINGER: Yes, page 6 of 9. "The parties
4 stipulate to the admissibility of the Verizon phone records
5 produced by the government in discovery for Kingsley
6 Investment Group, phone number 614-753-1491, which was used by
7 Chinedum Ndukwe; and Deborah Coyne, phone number 513-365-2404,
8 which was used by Alexander P.G. Sittenfeld.

9 "It is further stipulated and agreed that this
10 stipulation may be introduced into evidence as an exhibit, and
11 that the facts herein stipulated have the same status,
12 dignity, and effect as the undisputed testimony of credible
13 witnesses."

14 THE COURT: Mr. Singer, does that stipulation relate
15 to any particular exhibits?

16 MR. SINGER: Yes, Your Honor. This relates to
17 USA Exhibit 6 and USA Exhibit 7.

18 THE COURT: Are you moving for the admission of those
19 exhibits?

20 MR. SINGER: I am, Your Honor.

21 THE COURT: Any objection?

22 MR. C. MATTHEW RITTGERS: No, Your Honor.

23 THE COURT: USA 6 and USA 7 are admitted without
24 objection. Those exhibits will be phone records from Verizon.
25 And what the stipulation means is that if you see in one of

1 those phone records the phone number, for example,
2 614-753-1491, you can assume it's been proven to you that that
3 phone number belongs to Kingsley Investment Group, and that
4 that phone number is used by Chinedum Ndukwe, okay? That's
5 what the stipulation means.

6 I'm sure that the parties may refer to this stipulation
7 from time to time again, but when you -- that's just been
8 established. They don't have to keep establishing that that
9 phone number belongs to that person. All right.

10 Go ahead, Mr. Singer.

11 MR. SINGER: Thank you, Your Honor. This is the last
12 one for this evening.

13 "The parties stipulate to the admissibility of AT&T phone
14 records produced by the government in discovery for Laura
15 Brunner, 513-702-5927, which was used by Laura Brunner.

16 "It is further stipulated and agreed that this
17 stipulation may be introduced into evidence as an exhibit, and
18 that the facts herein stipulated have the same status,
19 dignity, and effect as the undisputed testimony of credible
20 witnesses."

21 THE COURT: Mr. Singer, does that stipulation relate
22 to any particular exhibit?

23 MR. SINGER: Yes, Your Honor, USA Exhibit 8.

24 THE COURT: Are you moving for the admission of that
25 exhibit?

1 MR. SINGER: Yes, Your Honor.

2 THE COURT: Any objection, Mr. Rittgers?

3 MR. C. MATTHEW RITTGERS: No, Your Honor.

4 THE COURT: USA 8 is admitted without objection, and
5 the jury is advised that to the extent those AT&T phone
6 records refer to telephone number 513-702-5927, that is the
7 phone number for Laura Brunner, and it is the phone that
8 Ms. Brunner used.

9 MR. SINGER: Thank you, Your Honor.

10 THE COURT: Is that it for the jury this afternoon?

11 MR. SINGER: Yes, Your Honor.

12 THE COURT: Okay. So we're going to release you
13 early today. We are going to start at 9:00 tomorrow, so try
14 to be here -- well, is there anyone for whom being here by
15 8:50 will present a problem? All right. Seeing no one,
16 please be here by 8:50. Where do they assemble?

17 COURTROOM DEPUTY: Jury assembly room, 914B.

18 THE COURT: Please assemble in 914B by 8:50. We'll
19 try to bring you down promptly at 9:00 and begin.

20 I need to give you your favorite admonition. Please do
21 not begin to form any opinion about anything you've heard in
22 this case. Please do not discuss this matter or any of the
23 evidence you've heard with anyone, including your fellow
24 jurors, including family members, including anyone you meet on
25 the street, anything of that nature. You just can't

1 communicate about this case.

2 Please do not do any research on your own by any
3 electronic means or any other means with regard to any of the
4 information that you've heard today, or with regard to the
5 charges that are at issue in this case. The only evidence
6 that you should consider is the evidence that you'll hear in
7 this courtroom. And it's very important that you not try and
8 do any separate investigation on your own.

9 Finally, to the extent anyone should approach you to
10 attempt to discuss this case, please advise the Court that
11 that has occurred, but do not discuss it with your fellow
12 jurors, all right?

13 Everybody have a good night.

14 (Jury out at 4:39 p.m.)

15 THE COURT: Was there another matter we wished to
16 discuss on the record this afternoon? I believe it was
17 related to one of the other stipulations?

18 MR. C. MATTHEW RITTGERS: Your Honor, we mentioned it
19 earlier this morning, and it was about -- we didn't want to
20 force the government to have to bring the stenographer about
21 the accuracy of those exhibits, but we also don't want to
22 remove our objections about the rule of completeness.

23 Mr. Schuett has a memo regarding segments that the
24 government -- I believe what you gave us in Agent Holbrook's
25 agent binder is what you intend to produce with him and

1 nothing more in terms of the tapes?

2 MS. GAFFNEY PAINTER: Your Honor, I know, according
3 to your standing order, that parties are to address the Court
4 and not each other.

5 THE COURT: Yes.

6 MS. GAFFNEY PAINTER: So may I respond to that?

7 THE COURT: You may, yes.

8 MS. GAFFNEY PAINTER: The portions that we have
9 identified as exhibits in the binder are the portions that we
10 intend to admit through Special Agent Holbrook.

11 MR. C. MATTHEW RITTGERS: Thank you. There's a memo
12 that we put together with what we think should also be played
13 with that, pursuant to the rule of completeness. Am I correct
14 on that?

15 MR. SCHUETT: Yes. Your Honor, if I may. As a call
16 back to the motion in limine ruling, you had deferred some
17 judgment on our motions regarding 8033 and rule of
18 completeness to see what was or was not played.

19 And so I styled it as a bench brief. I can send that
20 to -- I can file that. I can email it to both parties. Did
21 you want to wait until this was actually an issue in front of
22 the jury?

23 We just didn't know how you wanted -- we presumed that
24 you would want to -- not tonight, so that you could look at
25 it, which is fine.

1 THE COURT: Is this material that we anticipate will
2 be played tomorrow?

3 MR. SCHUETT: Based on what we were given in that
4 folder, yes, it is.

5 THE COURT: So I guess my concern is, at this
6 juncture, even if additional material should be played -- I
7 guess I don't know how the government is anticipating playing
8 this material.

9 Do you have the whole transcript and you're just going to
10 play time portions of it, or how do you have it prepared for
11 use for the jury?

12 MS. GAFFNEY PAINTER: There are two exhibits for
13 which we will seek to admit the entire audio recording but
14 will play just a segment for the jury and note it as such
15 within a transcript.

16 And for the rest of the audio portions that we intend to
17 admit, if they are edited or redacted in some way, we intend
18 to admit those, just those portions.

19 Now, all of these redactions and cuts will be noted in
20 the transcript. We make it very clear in the transcript what
21 time stamp we're starting at and what time stamp we're
22 stopping at.

23 THE COURT: So let me just stop you there for a
24 second. So are your additions with respect to things where
25 the government is admitting the entirety of the transcript but

1 only playing portions of it, or do you also have parts where
2 the government has -- where the government's exhibit is not
3 the entirety of the transcript?

4 MR. SCHUETT: I understand the question. Our
5 objection is to the truncation or their stopping a transcript,
6 you know, and then perhaps starting it again, like we saw with
7 the scotch and cigars event.

8 THE COURT: Okay. So I guess I didn't ask that
9 question very artfully. It sounds to me like there are like
10 what I'll call two categories of exhibits that the government
11 has.

12 Category 1 is exhibits where the government is admitting
13 the entirety of a conversation as an exhibit but proposing to
14 publish to the jury only portions of it, even though the
15 entire thing is admitted.

16 But there are other exhibits, this is category two, as to
17 which the entirety of the government's exhibit is a portion of
18 a conversation.

19 So if the Court were to say, oh, government, go on and
20 play additional parts, they may not be able to because they
21 don't have it in their exhibit.

22 So I'm wondering, are all of your objections only as to
23 category one, or are some of them as to category two as well?

24 MR. SCHUETT: If I'm understanding, I think it's --
25 really the issue is category two, which I understand they

1 wouldn't have prepared because it's something they've trimmed.

2 So, again, that was part of the issue, how we wanted to
3 address that, which is why we're bringing it up now.

4 THE COURT: No. I appreciate it. I guess I'm just
5 not sure how the government would prepare new -- even if the
6 Court were to say yes, as a matter of completeness, it should
7 be played now and there isn't a hearsay problem with it, or
8 something of that nature, just as a matter of trial procedure,
9 how would all that get done by tomorrow, I guess is my
10 question?

11 MR. SCHUETT: I mean, I don't have that answer,
12 unfortunately. Again, that was why I wanted to address is
13 this something that we're supposed to be objecting in the
14 moment? You know, is there a manner that you want us to
15 approach that now?

16 THE COURT: Well, I guess -- I mean, I thought what
17 we had discussed at the final pretrial conference was that the
18 government was going to indicate what portions it was going to
19 play, and then you were going to indicate in advance what
20 additional portions you would want played, and then I was
21 going to try and sort that out. But maybe that isn't what
22 people took out of the final pretrial. That's fine. I'm just
23 trying to figure out where we're at now.

24 Even if I were to agree with you, I'm just not sure how
25 we could implement it by tomorrow. I guess I can give you a

1 standing objection to the truncation of the exhibits, but I
2 just don't know what else we can do at this juncture. Do you
3 have any ideas, Ms. Gaffney Painter?

4 MS. GAFFNEY PAINTER: Well, first, Your Honor, just
5 two points I'd like to clarify for the record.

6 First of all, there is a third category of recordings.
7 Those are complete recordings that will be admitted in their
8 entirety, and they will be played in their entirety, just so
9 we're understanding the universe of recordings that we're
10 admitting here.

11 THE COURT: Yeah. I don't believe Mr. Sittenfeld has
12 any objection to category three. I was just trying to
13 distinguish between categories one and two, as to which he has
14 objections.

15 MS. GAFFNEY PAINTER: Absolutely. I just wanted that
16 to be clear so that everybody is --

17 THE COURT: That's fine.

18 MS. GAFFNEY PAINTER: And second, when you referenced
19 the final pretrial conference, that was the government's
20 understanding, that by producing the exhibit binders to the
21 defense and very clearly delineating where these cuts were
22 made, that was their opportunity to come to us and say we
23 believe under the rule of completeness this is an unfair edit.

24 So we would request whatever steps are taken, they are
25 taken promptly and not in front of the jury, when they've been

1 on notice since they received the binders what we intended to
2 admit.

3 THE COURT: When did they receive the binders, just
4 for the record?

5 MS. GAFFNEY PAINTER: Last Thursday, Your Honor.

6 MR. C. MATTHEW RITTGERS: Four days ago. Thursday
7 night, four days ago. So we've prepared this memorandum that,
8 I think, is not long, and we just highlight a couple things
9 that we think should be played additionally, and how the Court
10 wants to deal with that, obviously defer.

11 THE COURT: Well, do you have a copy of the memo?

12 MR. SCHUETT: Yes.

13 THE COURT: Can you provide a copy to Mr. Singer and
14 his team?

15 MR. SCHUETT: I can email it right now to everybody.

16 THE COURT: You don't have a hard copy of it?

17 MR. SCHUETT: I do not have a hard copy.

18 THE COURT: Can you email it to my chambers and to
19 the government attorneys, please.

20 MR. SCHUETT: Yes.

21 MR. SINGER: Your Honor, can chambers print us off a
22 copy? We don't have a computer with internet access here.

23 THE COURT: Sure.

24 MS. GAFFNEY PAINTER: Your Honor, just as a proposal
25 for moving forward. Would it be appropriate to, perhaps,

1 adjourn for the evening, go back and get our computers, we see
2 what they're proposing, and then we address it perhaps
3 tomorrow morning, rather than waiting here for this?

4 THE COURT: Well, my only concern on that,
5 Ms. Gaffney Painter, is if they are relatively short adds on
6 relatively few transcript excerpts, and the Court is inclined
7 to include them, if I rule on that tonight, your tech people
8 may have an opportunity to address that tonight; whereas, if I
9 wait until tomorrow morning, I don't see how your tech people
10 would be in a position to do it.

11 So I would like to just get a sense of kind of the
12 magnitude of what we're talking about here.

13 MS. GAFFNEY PAINTER: Certainly.

14 MR. C. MATTHEW RITTGERS: And, Your Honor, at least
15 as to bucket one, which is -- if I recall correctly, it is --
16 we have the transcripts in entirety but only a portion could
17 be played. That might be able to be resolved fairly quickly
18 if we could just play more of that clip.

19 THE COURT: Right. But Mr. Schuett indicated that
20 most of them, as I understood it, were in bucket two, which is
21 ones where the government doesn't even have, necessarily, with
22 it in the courtroom the additional material that you want
23 played.

24 Bucket one, the government has it, so if I were to order
25 it played, presumably we could figure out how to make that

1 happen. But bucket two, tomorrow I don't know that we could
2 make that happen because I don't know if they have the
3 entirety of those transcripts.

4 MR. C. MATTHEW RITTGERS: Understood. If I may, Your
5 Honor, we had transcripts that were provided from the
6 government many, many, many months ago.

7 The most recent trial ready transcripts are the trimmed
8 ones, so there is a possibility always go back to the
9 lengthier transcripts, because they do exist with greater
10 volume than the ones that are the trial transcripts. That's
11 the ones we've been basing a lot of our stuff off of.

12 THE COURT: I understand that, Mr. Rittgers, but I
13 anticipate that what the government is planning on doing is
14 playing video or audio clips from a flash drive or some other
15 type of device that probably has preselected snippets.

16 And if you were to say, oh, add four seconds to that, I
17 would assume it may not be on a flash drive, so they'd have no
18 way to add four seconds to that unless we put the additional
19 four seconds on tonight.

20 So that's what I'm trying to figure out is, with respect
21 to the ones that are in bucket one, they've got the whole
22 transcript. So if I say play an additional four seconds, they
23 can just hit play and they'll get another four seconds.

24 But with regard to the ones where they don't have the
25 whole transcript, they won't be able to play another four

1 seconds. Does that make sense?

2 MR. C. MATTHEW RITTGERS: Yes, Your Honor.

3 THE COURT: So I'm just trying to figure out how much
4 falls in which category.

5 MR. C. MATTHEW RITTGERS: Understood.

6 MR. SCHUETT: While we're waiting on that, Your
7 Honor, if I may?

8 I anticipate tomorrow, with Special Agent Holbrook, that
9 the government will be offering those secondary evidence
10 summaries that were also a point of contention in the motion
11 in limine.

12 Did you want us to deal with that as they come up, now,
13 or tomorrow morning?

14 THE COURT: Well, I guess what's hard to know, as I
15 said in my ruling on the motion in limine, I believe that the
16 summaries are admissible if they fairly and accurately
17 summarize material that is too voluminous to conveniently
18 present in court.

19 And I still, as I sit here right now, don't really know
20 if I have a basis for knowing one way or the other how
21 voluminous the material is and how fair the summary is.

22 So if you can identify for me a good way to come to speed
23 on that, I'd be glad to take a shot at it.

24 MR. SCHUETT: I didn't know, since we were here
25 outside the presence of the jury, look at those summaries now

1 to get that preliminary ruling, or if we needed to ask each
2 one the questions in here --

3 THE COURT: That's fair.

4 MR. SCHUETT: -- do that. That's not relating
5 tomorrow's argument --

6 (Indiscernible crosstalk.)

7 THE COURT: That's fair. Are the summary exhibits in
8 the government's exhibits books?

9 MS. GAFFNEY PAINTER: Yes, they are, Your Honor.

10 THE COURT: What are they?

11 MS. GAFFNEY PAINTER: Bear with me a moment to refer
12 to the exhibit list.

13 MR. SCHUETT: I believe it's 11A, B, C, and 31.

14 MS. GAFFNEY PAINTER: Yes, that comports.

15 THE COURT: 11A, B, C, and 31; is that right?

16 MS. GAFFNEY PAINTER: Yes, although there are many
17 31s, so bear with me just a moment. It's 31A.

18 THE COURT: Ms. Gaffney Painter, the only one in
19 31 that looks to me to be a compilation or summary would be
20 31A. Do you have a different view?

21 MS. GAFFNEY PAINTER: No, that's correct, Your Honor.

22 THE COURT: So it's 11A, B, C, and 31A; is that
23 right?

24 MS. GAFFNEY PAINTER: Yes. That's our understanding
25 of their objection, yes.

1 THE COURT: Is that the correct objection,
2 Mr. Schuett?

3 MR. SCHUETT: For 31, Your Honor, 31A as in apple?

4 THE COURT: Yes.

5 MR. SCHUETT: Yes, sir.

6 THE COURT: Yes. Let me start with what would be a
7 relatively easy one first. 11C, that just appears to be a
8 collection of phone numbers and assigned users.

9 MR. SCHUETT: No objection to 11C.

10 THE COURT: So it's really 11A, B, and 31A; is that
11 right?

12 MR. SCHUETT: Yes, sir.

13 THE COURT: They all look to be very similar, so I
14 think we can probably deal with them collectively.

15 What's the nature of the objection to A, which appears to
16 be sort of a timeline of some of the context between
17 Sittenfeld and Ndukwe, and it's creating a timeline of when
18 those calls occurred, which I assume came from the Verizon
19 phone records. Am I right, Ms. Gaffney Painter?

20 MR. SCHUETT: I'm sorry. Your Honor, are you on 11A
21 or 31A?

22 THE COURT: I'm on 11A. What was the basis for
23 preparing 11A, Ms. Gaffney Painter, if you know?

24 MS. GAFFNEY PAINTER: Your Honor, in 11A, we
25 identify, as you see in the right-hand column, which exhibit

1 this entry on the timeline is based on. I believe -- I
2 apologize. I believe you had a specific question.

3 THE COURT: I'm asking what are you purporting to
4 summarize or compile here? What is this?

5 MS. GAFFNEY PAINTER: This is a combination of phone
6 records, of phone recordings, of meeting recordings.

7 THE COURT: No. That's not my question. That's the
8 source of the information. What are you purporting to compile
9 here?

10 Is this an exhaustive list of all the contacts between
11 Sittenfeld and Ndukwe between September 21, 2018 and
12 December 23, 2019, or what is it this is purporting to be a
13 summary or compilation of?

14 MS. GAFFNEY PAINTER: Yes. A chronology of contacts
15 for this particular time period.

16 THE COURT: So it's all contacts between
17 Mr. Sittenfeld and Mr. Ndukwe between those dates. Is that
18 what you're saying?

19 MS. GAFFNEY PAINTER: Well, I want to be clear. It's
20 just the interactions or the contacts that we were introducing
21 into evidence. There may be other contacts that are not
22 embodied in this summary.

23 THE COURT: So it's a chronology of all of the
24 contacts between Mr. Sittenfeld and Mr. Ndukwe that the
25 government is introducing into evidence in this case is what

1 11A is; is that right?

2 MS. GAFFNEY PAINTER: Well, it's broader than that.
3 There's also contact with UC Rob, UC Brian, UC Vinny, and
4 Ms. Brunner are also contained on this. So it's broader than
5 Mr. Ndukwe.

6 THE COURT: So describe for me what it is, then.
7 It's all contacts between who and whom?

8 MS. GAFFNEY PAINTER: It's relevant contacts in our
9 investigation between Sittenfeld and other relevant witnesses
10 in this investigation between these dates.

11 THE COURT: Okay. All of them that you deem relevant
12 between September 21, 2018 and December 23, 2019, but then why
13 is 11B, looks to me to be an overlapping time frame. Is it --
14 what's listed on 11B that's not on 11A?

15 MS. GAFFNEY PAINTER: So 11B is a more detailed
16 accounting. It includes the duration of the contact. It
17 includes the time in eastern standard time that the contact
18 was made, so it is a more detailed snapshot of 11A.

19 THE COURT: So every line entry on 11B also appears
20 on 11A, although the converse isn't true; is that right?

21 MS. GAFFNEY PAINTER: That's my understanding, Your
22 Honor.

23 THE COURT: And it just provides additional details
24 about one of those calls.

25 So, for example, the first line on 11B is October 28,

1 2019, at 3:26 p.m., "Sittenfeld asks UC Rob for UC Vinny's
2 number."

3 So on October 28, 2019, we should see a call from
4 Sittenfeld to UC Rob; is that right?

5 MS. GAFFNEY PAINTER: Yes.

6 THE COURT: Or a text. I guess it's a text?

7 MS. GAFFNEY PAINTER: Yes. So if you're going to
8 page 2 of 11A.

9 THE COURT: Yes.

10 MS. GAFFNEY PAINTER: And you go five lines from the
11 bottom, you'll see Sittenfeld texts UC Rob, you see a 32A,
12 same date, same reference source.

13 THE COURT: And then where -- on the next line on 11B
14 is UC Rob responds to Sittenfeld's request. Where is that on
15 11A?

16 MS. GAFFNEY PAINTER: So it is contained, in that it
17 would be in that same exhibit 32A. That's a text exchange.
18 So if you need to --

19 THE COURT: I see. So it's not really Sittenfeld
20 texts UC Rob, but there's an exchange of text messages between
21 Sittenfeld and UC Rob?

22 MS. GAFFNEY PAINTER: Yes, that's right. We could
23 add that qualifier if that's helpful.

24 THE COURT: So in 11A, every time it says "Person A
25 texts Person B," it might, in fact, refer to a text exchange

1 between Person A and Person B?

2 MS. GAFFNEY PAINTER: My understanding is the
3 initiation is correct. You would not see Sittenfeld text
4 UC Rob, when the actual truth is Rob texted Sittenfeld and
5 then he responded.

6 THE COURT: I see. But when it says, "Person A texts
7 Person B," that may also include a response from Person B to
8 Person A?

9 MS. GAFFNEY PAINTER: That's correct. And you would
10 see that level of detail on 11B, which may not necessarily be
11 embodied in 11A.

12 THE COURT: So the first four on 11B are all part of
13 that one line of 11A, it looks like?

14 MS. GAFFNEY PAINTER: Yes, that's correct. This is
15 the essence of the text exchange that occurs on October 28th.

16 THE COURT: Gotcha. Okay. And, Mr. Schuett, what's
17 the nature -- now that we have an explanation of 11A and 11B,
18 what's your concern about it?

19 MR. SCHUETT: Well, I mean, first, Your Honor, they
20 are cherry picked in some sense because there are -- I mean,
21 if you look at the October 28th, 2019 event we were just
22 looking at that's in 11B, at the start, that has text messages
23 with UC Rob. 11A just says, "Sittenfeld calls UC Vinny."

24 I mean, that text does not reflect what is in and
25 everything that happened on October 28, 2019. But there are

1 also significant events in November of 2019 and December of
2 2019 with Mr. Ndukwe that aren't on 11A at all, and meetings
3 that were had and discussions that were had.

4 So there is some cherry picking on what events were put
5 into this chronology and then also expanded in 11B and 31A,
6 which we would argue creates it as an argument and may be
7 something that they could use in closing argument as a
8 pedagogical device, if they wanted to highlight certain
9 things, but should not go back to the jury in the form it is
10 in.

11 Moreover, the only name highlighted is Sittenfeld. It's
12 in bold, it's in red. And there are certain events, not all
13 events, that are blue. Presumably, all of those are devices
14 to draw the jury's attention to the name Sittenfeld to those
15 particular dates, which I would submit have to do with the
16 exchange of checks, the vote of the city council vote in June;
17 again, elements of this government's case.

18 So we would argue that this is, in fact, argument in the
19 way it's presented. I know it may just seem like it's red
20 font but, I mean, it's an argument, drawing their names --
21 they didn't put UC Rob ever in red text. They didn't
22 highlight dates, or even include that Mr. Sittenfeld rejected
23 their checks. That's not mentioned at all.

24 So while this may be a pedagogical device for closing, we
25 would object that this is a summary, a secondary summary,

1 based on *Bray* and 106. It should go back to the jury because
2 it's requiring inferences and arguments. It's also cherry
3 picking.

4 MR. C. MATTHEW RITTGERS: Your Honor, may I add one
5 thing just as an example?

6 THE COURT: Sure.

7 MR. C. MATTHEW RITTGERS: On 11A, if you look at
8 November 21st of 2018, "Sittenfeld calls UC Rob." He was
9 returning Rob's call back. So like that same day, Rob called
10 Sittenfeld, but it looks like Sittenfeld is initiating the
11 contact.

12 So when you leave things out of here, when you don't
13 include all the contacts, there is a perception as who's
14 contacting who is off.

15 THE COURT: Now that I've seen these exhibits and
16 have an explanation -- what is 31A, Ms. Gaffney Painter? Is
17 it like 11B, or is it...

18 MS. GAFFNEY PAINTER: Your Honor, my understanding is
19 that it's similar to 11B. It's summarizing communications
20 that appear in Exhibit 31.

21 So there are a number of exhibits underneath 31 that form
22 the basis of this, and this exhibit synthesizes those records
23 into a timeline.

24 THE COURT: Synthesizes a portion of those records, I
25 take it the portions the government thinks is relevant. Is

1 that fair?

2 MS. GAFFNEY PAINTER: I don't believe that it's
3 synthesized in parts, because if you look at the records in
4 31, this is 31B through N, these are specific texts, audio
5 recordings, call transcripts, text exchanges, and they are
6 embodied in this chart. It is not a selection. It is not a
7 subset of those records. It represents those records.

8 THE COURT: And so I guess, Mr. Schuett, to go back
9 to you for a second. You mentioned, I think we were on 11A,
10 and you said November 21, 2018, it says, "Sittenfeld calls
11 UC Rob," and you said that was actually in response to a call
12 from UC Rob to Sittenfeld.

13 If I looked at 18C, though, that would only be the call
14 from Sittenfeld to Rob, not the one from Rob to Sittenfeld.
15 Am I understanding correctly?

16 MR. SCHUETT: That is part of the concern, yes, Your
17 Honor. Also with 31A, I mean, again, our concern with red
18 text.

19 And then the blue banner at the top is not contained in
20 the Exhibit 31. They're highlighting an event that is
21 relevant to an element of their case, and we think that's an
22 argument.

23 THE COURT: I'm trying to separate things here a
24 little bit. So this is a correct summary of the exhibit that
25 is listed there. You just think 18C should have more

1 information than it does, it sounds like, or you think there
2 should be another exhibit that has the call from UC Rob to
3 Sittenfeld?

4 MR. SCHUETT: We would submit that on accuracy it
5 shouldn't be cherry picked. If they're going to list
6 everything as a chronology, it should list everything that
7 occurred. This is cherry picking. And then there's the
8 separate concern of the presentation with the blue and the
9 red.

10 THE COURT: Well, and I think what I understand,
11 Ms. Gaffney Painter, correct me if I'm wrong, is they, the
12 government, are saying this is not cherry picking, it is
13 everything that the government is going to introduce into
14 evidence in this case. So that may be cherry picking. The
15 government may introduce some evidence and not other evidence.

16 But the compilation lists exhaustively every
17 communication that the government is going to introduce into
18 evidence, is that correct, Ms. Gaffney Painter?

19 MS. GAFFNEY PAINTER: That's correct, Your Honor.
20 And that is the function of that call log, to show the jury
21 and all the parties and the Court where this information came
22 from.

23 MR. SCHUETT: And my apologies. This is just for 31A
24 that we are discussing?

25 THE COURT: No, we're on 11A right now.

1 MR. SCHUETT: 11A?

2 THE COURT: Yes. So I think they're saying 11A
3 includes every conversation between Sittenfeld and the other
4 listed folks that the government is introducing as evidence in
5 trial in this case.

6 So 11A is not a cherry pick. The underlying evidence may
7 be a cherry pick. The government may not be introducing every
8 conversation into evidence, but to the extent it has
9 introduced a conversation into evidence, it is including it on
10 the compilation.

11 So the compilation is an exhaustive list of the subset
12 that the government is introducing. Does that make sense?

13 MR. SCHUETT: I do understand. Yes, Your Honor.

14 THE COURT: So what's your objection to that? So the
15 compilation isn't cherry picked. You don't like the evidence
16 they're putting in, but the compilation isn't cherry picked.

17 MR. SCHUETT: But, Your Honor, the secondary evidence
18 summaries are supposed to be something that is summarizing
19 complex and difficult evidence, and is to materially assist
20 the jurors for the better understanding of that evidence.
21 We'd argue it doesn't do that.

22 Moreover, again, even if they just want to list -- so
23 this is some sort of diagram or code to find a particular
24 exhibit, they don't need to highlight Mr. Sittenfeld's name in
25 red. They don't need to put the blue banner to highlight the

1 specific events that are elements of their case.

2 It could just be a black and white list that is a summary
3 to say if you're trying to find what happened on October 24,
4 2019, you go look at 31K, but it's not.

5 MS. GAFFNEY PAINTER: Your Honor, may I propose a
6 path forward that I think might end the logjam?

7 THE COURT: Yes.

8 MS. GAFFNEY PAINTER: The government is -- we can go
9 back and remove the red color, if that's the issue that brings
10 us here today. We're also happy to triple check these
11 summaries and make sure that every contact between these dates
12 is embodied in these charts to make sure that we aren't cherry
13 picking from the cherry picking, or whatever the argument is,
14 so I think that we could move this forward.

15 THE COURT: What about the blue banners, are you...

16 MS. GAFFNEY PAINTER: We can change that to a gray,
17 if that -- because these are events, or we can remove the
18 gray, if that becomes an issue.

19 MR. SCHUETT: Your Honor, if I may? We offered
20 earlier a black and white copy that didn't have any banners,
21 any red. That was not accepted.

22 I mean, that's what we proposed earlier. But if we can
23 just neuter any drawing attention to certain things, then that
24 would have been something that we could have worked on, but I
25 would just join in that motion that that's what is done.

1 MS. GAFFNEY PAINTER: That's what I propose. And I
2 apologize to Mr. Schuett. I haven't seen this summary that he
3 has presented to us. He may have sent it to a colleague and I
4 haven't seen it yet.

5 THE COURT: Well, it sounds like the parties may be
6 on the way to some kind of agreed resolution, which will make
7 the Court happy; if not, we'll deal with it tomorrow.

8 But I do think, if removing the red from Mr. Sittenfeld's
9 name and removing the blue from the certain entries resolves
10 the dispute and addresses those concerns, it seems like a
11 pretty good resolution to me.

12 And, of course, during closing, you can highlight
13 particular parts in your presentation to the jury, they won't
14 go back to the jury room, but you can certainly do that during
15 closing.

16 MS. GAFFNEY PAINTER: Thank you, Your Honor.

17 THE COURT: Are you doing this tonight right now? By
18 "this" I mean the bench brief, Mr. Singer or Ms. Gaffney
19 Painter?

20 MS. GAFFNEY PAINTER: That is correct, Your Honor.

21 THE COURT: Okay. I'm not sure I understand what
22 this bench brief is, Mr. Schuett, so maybe you can help me.

23 So let's just look at Number 1, Mr. Sittenfeld's original
24 encounter with undercover agents. There's a statement that's
25 listed there. Is that the statement you propose adding, or

1 what is this? I don't understand.

2 MR. SCHUETT: Yes, Your Honor. The statements that
3 are included in the brief were the ones that we were proposing
4 be included on the record.

5 THE COURT: So there's some snippet that the
6 government intends to play from a February 2019 encounter with
7 undercover agents, and whatever that snippet is, the next line
8 after it is, "How can I be helpful as you guys think through
9 opportunities you might be exploring in Cincinnati?"

10 MR. SCHUETT: I don't know that they are offering
11 anything from February of 2018 on that particular statement.
12 It's my understanding that Mr. Sittenfeld was not a target at
13 that point, so I don't -- that one I don't -- I would not --
14 no, I don't think they intend to offer anything from that
15 date.

16 THE COURT: Well, then, how under the rule of
17 completeness -- I don't understand. You're adding new
18 conversations through the rule of completeness, or what?

19 MR. SCHUETT: The context of -- so when they move
20 forward, it's been a contention of the government that their
21 first meeting with Mr. Sittenfeld was because of Mr. Ndukwe in
22 October of 2018. That is not actually true. They had prior
23 conversations in February of 2019.

24 THE COURT: Well, but to the extent there's a dispute
25 about what was actually true, I think we've got a bunch of

1 people sitting in a box that are supposed to sort that out,
2 and you guys can present the competing versions of it.

3 I'm not going to make factual determinations about
4 disputed issues of fact as an evidentiary ruling.

5 MR. SCHUETT: Understood, Your Honor.

6 THE COURT: So the second one -- so these are
7 statements from some conversation as to which the government
8 is introducing part of the conversation, and you would propose
9 adding these statements, Mr. Schuett?

10 MR. SCHUETT: That's my understanding, Your Honor.

11 THE COURT: Is this like the next part of some
12 conversation? I'm a little at sea here because I don't know
13 what's going on.

14 MR. SINGER: Can I address?

15 THE COURT: Mr. Singer, that would be great.

16 MR. SINGER: As you guys were discussing the other
17 issue, I was paging through.

18 THE COURT: Okay.

19 MR. SINGER: It appears to me, and Mr. Schuett can
20 correct me if I'm wrong, but the only one that I can see that
21 relates to the rule of completeness would be Number 3, which
22 is Roman Numeral III page 3. And this is the gift transcript,
23 or recording, that was played in opening.

24 THE COURT: Right. That was already played in the
25 opening, and I already ruled on that. So I think --

1 MR. SINGER: That's the only one that relates to the
2 rule of completeness, as far as I can tell.

3 THE COURT: Is that correct, Mr. Schuett?

4 MR. SCHUETT: My understanding of the government's
5 intention to what they intend to play, it does appear that one
6 would be solely the rule of completeness.

7 This was also in response to Your Honor's ruling on this
8 statement that we intend to offer that could be exculpatory,
9 and if there's another reason and state of mind under 8033,
10 Your Honor.

11 THE COURT: Well, right. But to the extent they're
12 admissible as evidence, I don't know that that allows you to
13 play them during the government's case in chief.

14 If they're admissible as evidence, you can circle back
15 and say, well, the government wanted you to hear this. Here's
16 the rest of it. As long as it's admissible you can play it.

17 But I think the only way you can force the government to
18 play things in their case in chief that you would want added
19 would be through the rule of completeness.

20 MR. SCHUETT: I understand, Your Honor. We just
21 wanted that clarity before that process began.

22 So if I understand what Your Honor is saying, 3 has been
23 ruled on so is, I guess, moot at this point that we will get
24 to play that as far as the rule of completeness.

25 And the rest we should deal with as matters of

1 cross-examination or other presentations that may deal with
2 potential evidentiary issues at that time. Is that correct?

3 THE COURT: Yes.

4 MR. SCHUETT: Okay. I just wanted to make sure I
5 understand how you wanted to proceed. These are the ones that
6 we thought would come up, so I thought I would present it now
7 before we disrupted the trial process.

8 THE COURT: That's fine. And during
9 cross-examination, there may be evidentiary issues. I'm not
10 saying I necessarily agree with you that these are admissible,
11 and you may need a sponsoring witness for them, and you may
12 need to wait for your case to do it.

13 But assuming the witness on the stand is the person who
14 is participating in the phone call or the conversation, and
15 assuming it's admissible, I guess you could, at least, use it
16 for impeachment.

17 I don't know if the government's going to stand firm on
18 the you've got to introduce evidence through your own case
19 part or not, but... Mr. Singer?

20 MR. SINGER: Was the question whether we're going to
21 introduce --

22 THE COURT: Well, no. I mean, look, if there's
23 something that's admissible that comes up on cross, I'd think
24 the general practice would just be it's admitted.

25 You know, if it's only admissible for impeachment, then

1 it isn't admitted. But if it's admissible as evidence,
2 technically, I guess, you can make somebody recall that
3 witness during their case in chief because they shouldn't be
4 introducing evidence through your case but, boy, is that a
5 rule that's ignored to the point of, you know, non-existence.

6 MR. SINGER: Can we confer on this overnight, Your
7 Honor?

8 THE COURT: Yes.

9 MR. SINGER: As far as that goes?

10 THE COURT: Yes.

11 MR. SINGER: Because it doesn't necessarily implicate
12 the rule of completeness.

13 THE COURT: Yes. So I think the one that does is 3.
14 And so is there any way the government can just play the
15 complete conversation on 3?

16 MR. SINGER: I guess that's the question, Your Honor.
17 What I'm taking from the conversation is that based on your
18 ruling related to the opening, that these subsequent minutes
19 of the recording related to the gift are now admissible
20 pursuant to the rule of completeness, although we have not
21 played that portion of the recording yet.

22 And if we put something on the exhibit list, it's not
23 necessarily that we're going to put in every piece of evidence
24 that we put in on our exhibit list.

25 THE COURT: Right.

1 MR. SINGER: So we're a little bit confused as to
2 where we are now.

3 THE COURT: So where we are is if you're going to
4 play the material with respect to the gifts, I would like you
5 to play the full content that was played during the opening;
6 if you're not, you don't need to.

7 But I think that, in my mind, it completes that
8 conversation in a fair manner, and I think just where we're at
9 now, you know, I think that's the best path forward.

10 So other than that, I don't think I've ruled on anything
11 here. But to the extent you're going to play that snippet,
12 play the parts from those PowerPoints too, which I believe you
13 have, right? You have those PowerPoint snippets because you
14 got the PowerPoint, right?

15 MR. SINGER: So pull the snippets from their
16 PowerPoint?

17 MR. C. MATTHEW RITTGERS: Your Honor, they might not
18 have the most recent one yet. Yeah, they would have that. If
19 not, email me, and I will get that.

20 THE COURT: They have the PowerPoint, don't they?

21 MR. C. MATTHEW RITTGERS: Yes. That was objected to.
22 I just want to make sure -- I'm sorry. I'm tired. Yes, they
23 have it.

24 THE COURT: They objected to it. I overruled it,
25 allowed you to play it. But, in any event, I believe they

1 have the source content and can add it to their audio file for
2 playing purposes.

3 And of course, you don't have to elicit testimony about
4 any portion you don't want to elicit testimony about,
5 Mr. Singer, okay?

6 So does everybody understand where I'm at on this?

7 MR. SCHUETT: I believe so, Your Honor.

8 THE COURT: Mr. Singer?

9 MR. SINGER: Yes, Your Honor.

10 THE COURT: Okay. And everybody has got their
11 objections preserved.

12 And with respect to the rest of this, I guess we'll have
13 to deal with the rest of it after Mr. Singer and his
14 colleagues have had an opportunity to review this memo and
15 figure out where we're going.

16 But it sounds like they're not really rule of
17 completeness stuff, so then I think it just becomes an
18 evidentiary question on cross exam and/or in your case in
19 chief.

20 With that said, is there anything further the parties
21 wish to discuss this evening?

22 MR. SINGER: No, Your Honor.

23 MR. C. MATTHEW RITTGERS: Your Honor, the first
24 bucket that we were talking about, going back to the rule of
25 completeness.

1 You know, for example, the September 24, 2019 hotel
2 meeting, I believe the government is attempting -- well, is
3 intending, I should say, to play just a portion of that
4 meeting and not the entirety of a 55-minute meeting that is --
5 well, you heard in the opening statement, has to do with
6 Mr. Sittenfeld pausing projects before the city and the way in
7 which they led up to Vinny entering. I don't think they're
8 going to include any of that in their presentation. I just
9 want the Court to be aware of that.

10 THE COURT: Yeah. And I think I sort of ruled on
11 that in my motion in limine ruling and at the final pretrial.

12 I do not believe the rule is that the government
13 introduces two minutes of a call, that means they have to
14 introduce the entire 55 minutes. I just don't think that's
15 the way it works.

16 I mean, there are undercover investigations that involve
17 literally thousands of hours of recorded material. And to
18 suggest that because the government introduce five minutes of
19 a thousand hours of video means that all thousand hours comes
20 in is sort of going to bring undercover investigation trials
21 to a sort of screeching halt, I think. So I don't understand
22 the rule of completeness to require them to put everything in.

23 As I said at the final pretrial, to the extent there is
24 something else that dramatically changes the context of the
25 snippet that the government intends to play such that it would

1 be misleading to present it to the jury, I actually think
2 there may even be a 403(b) argument that -- you know, the
3 example I gave where if your client had said there's no way
4 I'm going to say something like if you give me a contribution,
5 I'll get you the votes.

6 And the government just says, I won't play the part where
7 he says if you give me the contribution, I'll give you the
8 votes. I think that's a 403(b) problem probably, because it's
9 unfairly prejudicial in light of the conversation immediately
10 surrounding it.

11 But I don't think that leads necessarily to a rule that
12 says the entire 55-minute meeting needs to be introduced, so
13 I'm not inclined to do that.

14 But if there are examples like the one I just gave, that
15 was the opportunity I was trying to give you guys after the
16 final pretrial, to identify instances where you thought that
17 was the case, and I haven't seen those yet, so... yes,
18 Mr. Singer?

19 MR. SINGER: None of those are included in here.

20 THE COURT: It appears to me to be the case that that
21 is not the contents of the bench brief that I just received
22 today, is that right, Mr. Schuett?

23 MR. SCHUETT: Your Honor, it is a marriage of the two
24 different motions in limine that we had discussed with the 803
25 and 106, I would agree with your statement, yes, sir.

1 THE COURT: Okay. Anything else, Mr. Rittgers?

2 MR. C. MATTHEW RITTGERS: No, Your Honor.

3 THE COURT: All right. I think we can recess for the
4 night

5 (Proceedings adjourned at 5:22 p.m.)

6 - - -

7 C E R T I F I C A T E

8 - - -

9 I, M. SUE LOPREATO, RMR, CRR, certify that the foregoing
10 is a correct transcript from the record of proceedings in the
11 above-entitled matter.

12 /s/ M. Sue Lopreato
13 M. SUE LOPREATO, RMR, CRR
14 Official Court Reporter

September 30, 2022

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